RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

सत्यमेव जयते

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४६] गुरुवार ते बुधवार, जानेवारी १६-२२, २०१४/पौष २६-माघ २, शके १९३५ [पृष्ठे ३९, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT.

REVISION APPLICATION (ULP) No. 47 of 2002.—IN COMPLAINT (ULP) No. 725 of 2001.—(1) Bharatiya Kamgar Sena, Shiv Sena Bhavan, Dadar, Mumbai 400 028; (2) Mr. Bhiku Manchekar; (3) Mr. Pradeep Salvi; (4) Mr. Prakash Govalkar; (5) Mr. Vijay Dhule; (6) Mr. Baburao Patil; (7) Mr. Krishnakant Kadam; (8) Mr. Laxman Shinde; (9) Mr. Ashok Salkar; (10) Mr. Vasant Bhogale; (11) Mr. Yashwant Ghadigaonkar; (12) Mr. Ashok More; (13) Mr. Hiroj Varadkar; (14) Mr. Vitthal Parab; (15) Mr. Janardhan Rane; (16) Mr. Ramdas Kawale; (17) Mr. Kalyan Temkar; (18) Mr. Dilip Poojari; (19) Mr. Ankush Chavan; (20) Mr. Mohan Sawant; (21) Mr. Suryakant Parab; (22) Mr. Ramdev Yadav; All C/o. Bharatiya Kamgar Sena.—*Applicant*—*Versus*—(1) M/s. Oriental Containers Ltd., 1076, Dr. E. Moses Road, Worli, Mumbai 400 018; (2) Mr. B. K. Toshniwal, Executive Director, M/s. Oriental Containers Ltd.—*Respondents.*

In the matter of Revision under section 44 of the MRTU & PULP Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri. S. A. Sawant, learned Advocate for the Applicants.

Shri V. P. Vaidya, learned Advocate for the Respondents.

ORAL JUDGMENT

(16th April 2002)

1. The present Revision Application is preferred by the Original Complainants feeling aggrieved of the order dated 14th February 2002 below Exh. U-3 whereby the 4th Labour Court rejected the Application of the Applicants *i.e.* Original Complainants, wherein they have prayed that the Respondents be directed to withdraw the termination letters dated 30th November 2001 issued to the Complainants and they be allowed to resume on their duties during the pendency of the Complaint and also to direct not to recruit any other person to carry out the jobs being done by the Complainant workmen and Respondents be further restrained from transferring the said job to any other Agency and/or to Contractor. It was also prayed that the Respondents be directed not to shift any machines, and/or to dispose of the Plant during the pendency of the Complaint.

2. The brief facts giving rise to the case may be stated as follows :—

The Complainant No. 1 Bhartiya Kamgar Sena represents the employees in the Respondent No. 1 company. It shows that there is no recognised union. It is alleged in the complaint that the Respondent company has engaged in unfair labour practice under section 28 read with item 1(*a*), (*b*), (*d*) of Sch. IV of the MRTU & PULP Act, 1971 from 3rd December 2001. Complainants stated that there are about 353 employees in the Company in January, 1998. The service conditions of the said employees were governed by settlement dated 8th August 1995 applicable till 31st August 1998. It is contended that after terminating the said settlement, charter of demands were sent to the Company and the same are still pending. It is the main submission that by Award dated 22nd December 2000 in Ref. (IT) No. 42/98 the company was allowed to retrench 141 workmen of Unit No. 1.

3. The Complainants also stated that in the meantime in February, 2000 113 workmen were transferred to new factory at Vashi, Navi Mumbai which brought down the strength of workmen working in the Respondent No. 1 to 240. Subsequently about 76 workmen have opted for V.R.S. and accordingly removed in January, February, 2001, which brought down total strength of employees to 164. It is further contended that during the said period about 100 workmen have left the Company bringing down the figure to 64, who were working at present.

4. It is stated that the Respondents on 30th November 2001 sent letters to the Complainants proposing retrenchment as per the Award. The Complainants state that when notice dated 15th January 1998 was issued u/s. 25-N, there were about 353 workmen employed. According to the Complainants, if more than 141 workmen have already left the Company, any question of retreching the Complainants does not arise. It is stated that the retrenchment of the Complainants is not tenable in law. The Complainant's contentions is that their services have been terminated on false, fabricated and concocted reasons and grounds and it amounts to victimisation. Complainants further stated that some of the junior workers are still working though notice u/s. 25-N was also issued to them. According to the Complainants, Respondent wants to remove the workmen who are members of Complainant No. 1 Union. It is one of the main grievance that the Respondents have re-employed two workmen who have resigned from the services as well as contract system is introduced through which 15 workers are working. In substance, the Complainants submitted that the Respondents have not followed the process of law while retrenching the Complainants and have taken a decision of termination of Services on pick and chose basis. Hence, the Complainants submitted that the Respondent, Company is having adequate work and there is no good reason why the Respondent should retrench the present Complainant workmen.

5. According to the Complainants on 14th January 2001 Respondents have shifted the Machine from Worli Factory to Murbad and thus making attempt to abolish working of the permanent nature and transferred it to other plants, making many workers jobless. In substance, the Complainant's contention is that they have a strong *prima facie* case and the balance of convenience is also in their favour and therefore they prayed for directions to the Respondents to withdraw the termination letters dated 30th November 2001 and to grant the prayers detailed earlier.

6. The Respondents by filing Reply Exh. C-2 resisted the Application Exh. U-3 and the same may be summarised as under :—

The Respondents denied that they have engaged in any unfair labour practice, as alleged. According to the Respondent the complaint is confined to Unit No. 1 which was functioning at Worli, now partially functioning at Worli and partially at Juinagar, Navi Mumbai. Respondent admitted that by making application on 15th January 1998 they sought permission to retrench

141 employees from Metal Container Division, Unit No. 1. The workmen intended to be retrenched were juniormost in their category and passing of award dated 22nd December 2000 allowing Reference and granting permission to retrench 141 workers whose names were stated in the said application is also admitted. Respondents further contended that the said award has not been challenged by the Complainants.

7. The Respondents further admitted the settlement dated 9th August 1995 for shifting the factory from Worli to Navi Mumbai and Voluntary Retirement Scheme with the Complainant Union and Engineering Workers Association respectively. The Respondents stated that presently there are 108 workers working at Juinagar, Navi Mumbai and 141 employees at Worli Unit which is the strength of workmen of the Metal Container Division Unit. According to Respondents, out of 141 workmen who were permitted to be retrenched, 32 have accepted V.R.S. while 20 left due to death/retirement or resignation. Thus 89 employees are remained to be retrenched. The Respondent further states that by letter dated 30th November 2001 they have terminated the services of the Complainants by way of retrenchment. The names of the Complainants were included in Ref. (IT) No. 42/98. In substance, it is asserted that the retrenchment of the Complainants is legal, fair and proper. It is one of the contention that presently there are 149 employees working in the said Division. Respondent denied that there is no compliance of various provisions and conditions of settlement.

8. The Respondent's another contention is that it had rightly effected the said retrenchment and therefore there is no unfair labour practice committed as alleged by the Complainants. It is denied that junior employees were retained. According to the Respondents, Mr. Rajaram Mohite and Mr. V. Raji were not amongst the 141 employees allowed to be retrenched and therefore they are not retrenched. So also some other employees working are from the Maintenance Department and none of those are from Fabrication Department. It is submitted that by passing an Award allowing retrenchment of 141 workmen does not mean that all of them have to be retrenched simultaneously. Respondent states that it is left to their discretion to exercise the said right in a manner in which it finds suitable, convenient and economical. Respondent stated that non retrenchment of Complainant No. 6 is not illegal, in view of non-retrenchment of his juniors *viz.* Ramchandra Pande, Gamaprasad Yadav though in the list of 141 employees. It is also stated that presently the company does not have sufficient financial resources to implement the settlement in respect of other employees who have accepted V.R.S. Thus on these and other grounds, it is submitted that the Complainants have not made out a *prima facie* case for grant of the reliefs when particularly the Complainants have not challenged the Award passed by the Industrial Court and requested to dismiss the Application for Interim Relief.

9. I have called for the record and proceedings and gone through the same. Heard Mr. Sawant, learned Advocate for the Complainants/Applicants and learned Advocate Shri V. P. Vaidya for the Respondents. The following points arise for my determination, with my findings thereon, as below :—

Points.—

(*i*) Whether Revision Application (ULP) No. 47/2002 is to be allowed by setting aside the order below Exh. U-3 dated 14th February 2002 passed by the 4th Labour Court, Mumbai in Complaint (ULP) No. 725/2001 ?

(*ii*) What order and relief ?

Findings.—

(*i*) Point No. 1 : No.

(*ii*) Point No. 2 : Please see order below.

Reasons

10. *Point No. 1.*—The Applicants who are the Original Complainants have filed Complaint (ULP) No. 725/2001 alleging unfair labour practice under section 28 read with item 1(*a*), (*b*) and (*d*) of Sch. IV of the MRTU & PULP Act, 1971 and thereby claimed for the reliefs mentioned in the Main Complaint. The Complainants have taken out Exh. U-3 for interim relief, referred to above, and the 4th Labour Court has rejected the said prayers. It is revealed from the record and proceedings that there was a Ref. (IT) No. 42/98 before the Industrial Tribunal, presided by Shri S. G. Kadam and it was between the employer *i.e.* the Respondents on the one hand and (1) Engineering Workers Association; and (2) Bhartiya Kamgar Sena, on the other hands, which are registered trade Unions, but not recognised one. The said Reference has been adjudicated and award was published on 19th March 2001. On seeing the said Award, it shows that the First Party *i.e.* employer (Respondents herein) is allowed to retrench 141 employees, including 15 to 16 workers whose names were mentioned in the said list dated 20th March 1998 and who have left the employment of Respondents. It shows that in view of the said Award, the employer company has retrenched the services of the Complainants herein who are 21 in number. There is a letter dated 30th November 2001 whereby the employer retrenched the services of Yeshwant Ghadigaonkar and similar type of letters of retrenchment are issued to the remaining workers who are the Complainants herein. In the said, letter there is a reference of Award dated 22nd December 2000 in Ref. (IT) No. 42/1998 and in pursuance of the said Award the Company has retrenched 141 workers of Unit No.1 including the Complainants herein.

11. One of the grievance and contention of Mr. S. A. Sawant, learned Advocate for the Applicants is that the employer has discriminated while effecting retrenchment of the Complainants because the workers who are junior to the Complainants have been kept in the employment. The second grievance of the Complainants is that presently 64 workers are working at Worli Unit and hence question of giving retrenchment to 141 workers including the present Complainants does not arise. Mr. Sawant learned Advocate for the Applicants pointed out that in all 353 workers were working in the Company and out of them, 76 workmen have accepted V.R.S. 100 workers left the Company because of retirement, resignation and death and 113 workmen have been transferred from Worli Unit to Navi Mumbai. In substance Mr. Sawant canvassed that the retrenchment of the Complainants is not according to law, as mentioned in the operative part of the Award dated 22nd December 2001, published on 19th March 2001. In view of the aforesaid position, Mr. Sawant stressed that the employer has committed unfair labour practice when particularly where was work available and under the colourable exercise of the employer's right, they have retrenched the present Complainants. According to the Applicants' Advocate, the Complainants have made out a strong *prima facie* case and hence the labour Court should have granted the relief, but lost the sight of the facts and circumstances and the actual position in the case in hand, thereby led emphasis that the impugned order passed by the Labour Court be set aside and the Reliefs, as prayed in the Application Exh. U-3 be granted.

12. It is significant to note that there is no dispute between the parties that Ref.(IT) No. 42/98 has been adjudicated on 22nd December 2000 and the same has been published in the *Government Gazette* on 19th March 2001. It is necessary and relevant to refer to para 12 of the Award wherein the Industrial Tribunal has mentioned that "The employment of excess workers would definitely harm and disturb production schedule as well as discipline in factory. For these reasons the management has decided to retrench 141 workers same of which are mentioned in Application dated 16th January 1998. The first party justifies the necessity for termination and retrenchment of 141 workers as there is no work available for them by the Company. The Company would be in a position to carry out its manufacturing operation without these 141 workers, effectively, economically and in the most viable manner. There is therefore, absolutely

no necessity for retaining these 141 employees in employment, the same of which are surplus to the requirements of the company." The Industrial Tribunal has while adjudicating the Reference has also held that there is no justification in creating an economic crisis both upon the Company as well as nearly 170 employees who would be left if 141 employees are trenched. Thus the adjudication of the Reference has given a right to the employer to retrench 141 employees. Record reveals that in the 141 employees mentioned in the Reference, the present 21 Complainants are figuring and therefore the Company has issued retrenchment letters dated 30th November 2001, referred to above. It is also to be noted that when the Award was declared and published, the present Complainants were aware about their retrenchment, but they have not challenged the said Award in the Higher Court. Meaning thereby, whatever is mentioned in the Award has a binding force *vis-a-vis* the parties,

13. I am aware that much was canvassed by Mr. Sawant, Learned Advocate for the Applicants that the Company has made discrimination while issuing the retrenchment letters and thereby adopted pick and choose policy, and the said exercise of discretion is partiality and discrimination. According to Mr. Sawant, some of the workers *viz.* Ramchandra Pandey, Gamaprasad Yadav, Sayyed Umar, Dilip Nimbalkar, Rajaram Mohite and V. Raju were not retrenched. It shows that the Respondents by their letter dated 18th December 2001 conveyed the Complainant Union that out of the aforesaid 6 employees, V. Raju and Rajaram Mohite are not in the list of 141 workmen permitted to be retrenched, while in respect of the others, they are taking appropriate action in accordance with the Award and as per the terms in the settlement with Engineering Workers Association. In view of this position, at this stage I don't find any substance in the grievance made by Shri Sawant, Learned Advocate for the Applicants. At the time of arguments, Mr. Vaidya, learned Advocate for the Respondents pointed out that the 4 employees are working in Printing and Mainteinance Department and are not from the Fabrication Department and they will be retrenched according to seniority. It is admitted by the Respondent that the Complainant No. 6 was senior than Dilip Nimbalkar, working in the said department, but it is submitted that the said Dilip Nimbalkar is one of the signatory of the settlement dated 12th December 2000 whereby he agreed for voluntary retirement. Therefore at this stage, it is difficult to come to the conclusion that the employer has discriminated the Applicants herein while issuing the retrenchment notices. At the time of hearing the Main Complaint, the Complainants can produce the list of the workers who are junior to them, but not been retrenched and that has caused prejudice to the Complainants. This grievance can be dealt with and considered by the Labour Court at the time of hearing the Main Complaint. The Labour Court has in the impugned judgment observed that the reason given by the employer for retrenching Baburao Patil and not retrenching Dilip Nimbalkar appears to be justified and while deciding the Interim Application, it is not necessary to go into the depth regarding not terminating the services of Mr. Dilip Nimbalkar. As detailed above, the said grievance can be sorted out by adducing oral and documentary evidence by the Complainants.

14. On the contrary, Mr. Vaidya, Learned Advocate for the Respondents submitted at the Bar that before 31st March 2002, the employer has retrenched all 141 employees, as mentioned in the Award. Mr. Vaidya pointed out that the Award passed by the Industrial Tribunal has an enforcement effect for about 1 year, provided the period is extended by the Government. In support of his submission, he pointed out Sec. 19(*3*) of the Industrial Disputes Act, 1947 which *inter-alia* lay down "An Award, shall, subject to the provisions of this section, remain in operation for a period of one year (from the date on which the award becomes enforceable under section 17A)." Mr. Vaidya, Learned Advocate for the Respondents pointed out that as per the Award, the employer *i.e.* Respondent has taken legal steps by issuing retrenchment letters dated 30th November 2001 and therefore there is no illegality on the face of the record and the Labour Court has rightly appreciated the facts and circumstances involved in this case.

15. On going through the impugned judgment and the Award passed by the Industrial Tribunal dated 22nd December 2000, published on 19th March 2001, at this stage it cannot be said that the employer has issued the retrenchment notices contrary to the Award passed by the Industrial Tribunal. It is significant to note that in the Award, the employer was permitted to retrench 141 workers including the present Complainants and therefore in pursuance of the observations made in the Award, as referred to above, the employer has issued the retrenchment notices and I don't find at this stage, there is any illegality committed by the employer.

16. I am aware that at the time of arguments, much stress was given by Mr. Sawant that though there is work available with the employer and 64 workers are at present working, the employer has deliberately issued the retrenchment notices in order to oust the Complainant Bharatiya Kamgar Sena. He further pointed out that as per Sec. 25-H of the I. D. Act retrenched workmen can be taken into employment by offering them re-employment and such retrenched workers who offer them selves for re-employment shall have preference over other persons. He pointed out that when the juniors are retained in the employment and senior workers *i.e.* the present Complainants are retrenched, they can be given employment as prayed by way of interim relief. The said submission of Mr. Sawant, Learned Advocate for the Applicants at this stage cannot be accepted for the simple reason that the employer has issued the retrenchment notices because of the permission granted while passing the Award. If at the time of hearing the Main Complaint, it is proved that there is work available with the Employer and there is a necessity of workers, then in that case, the employer is bound to give them re-employment, as pointed out by Mr. Sawant, as envisaged in Sec. 25-H of the I. D. Act. Similarly whether the employer has adopted pick and choose policy by way of discrimination, that also can be decided while disposing the Main Complaint.

17. It is necessary to place on record that the Complainants have by way of interim relief, as detailed earlier, prayed that they be allowed to resume on their duties during the pendency of the Complaint or be directed to pay 100% wages to the Complainants. Such a relief at the interim stage cannot be granted, otherwise it would amount to granting the final relief when the Complaint itself is pending. It is to be noted that if the Complainants succeed in proving the unfair labour practice alleged in the Main Complaint, then the Complainants will get the necessary reliefs, as mentioned in the Main Complaint. While deciding the Interim Application, the Court has to see a *prima facie* case, balance of convenience and irrepairable loss. In the case in hand, on carefully examining the facts and circumstances detailed above and particularly the observations made in the Reference, I don't find that the Complainants have made out a *prima facie* case for grant of the interim reliefs detailed above. It is because if the Complainants succeed in the Complaint, they can be reinstated or in the alternative they can be paid wages. The Labour Court has considered the said aspect in the impugned judgment and rightly came to the conclusion that the reliefs mentioned in Exh. U-3 cannot be granted at the interim stage.

18. It is necessary to mention here that the powers conferred by section 44 of the Industrial Court empowers it, in so far as evidence is concerned, to set aside the order under revision when the evidence on record reasonably read, is in capable of supporting the order. In the case in hand, on close scrutiny, based on the documents produced by both the sides, I don't find that the Labour Court has committed any illegality or irregularity on the face of the record while rejecting the Application Exh.U-3. Hence, no interference of the Industrial Court is called for to disturb the impugned order passed by the Labour Court. Therefore, I answer the Point No.1 in the Negative.

19. I am aware that much stress was given by Mr. Vaidya, Learned Advocate for the Respondent that when in the Reference, the employer has been permitted to retrench 141 workers, the Complainants cannot challenge the said Award by way of filing the present Complaint alleging unfair labour practice and canvassed that the complaint itself is not maintainable. The said submission of Mr. Vaidya at this stage cannot be accepted because when the Complainants have rushed to the Court alleging unfair labour practices while issuing retrenchment letters to the Complainants and there is a specific allegation of discrimination amongst the workmen and the said point can be decided by the Labour Court at the time of hearing the Main Complaint and at this stage no opinion can be expressed by this Court.

20. *Point No. 2.*—In view of the foregoing reasons and finding on Point No. 1, the Revision seems to be devoid of merits and hence the Order :—

Order

Revision Application (ULP) No. 47 of 2002 is dismissed.

No order as to cost.

Complaint (ULP) No. 725 of 2001 is to be expedited and disposed of by the end of July, 2002.

Parties and Advocates are directed to appear before the Labour Court on 26th April 2002 at 11 a.m. and co-operate the concerned Labour Court for disposal of the Complaint within the time-limit by not taking unwarranted adjournments.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated 16th April 2002.

S. R. ADAV,
Deputy Registrar,
Industrial Court, Mumbai.
Dated 26th April 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

Complaint (ULP) No. 1150 of 1988.—Sharad Laxman Dalvi, Lallubhai Patel Chawl, Room No. 1, Chincholi Bunder Road, Malad (West), Mumbai 400 064.—*Complainant—Versus*—(1) M/s. Mahindra & Mahindra Ltd., Automobile Division, Akurli Road, Kandivali (East), Mumbai 400 101; (2) Mahindra & Mahindra Worker's Union, 2, Panchavati, S. V. Road, Kandivali (W.), Mumbai 67.—*Respondents.*

Complaint of unfair labour practice under items 5, 6, 7, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri A. P. Kulkarni, Advocate for Complainant.

Shri R. N. Shah, Advocate for Respondent.

Oral Judgment

(Dated 6th February 2002)

1. This complaint has been filed by the Complainant Shri Sharad Laxman Dalvi under Items 5, 6, 7, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The Complainant is an employee of the Respondent Company. The Respondent No. 1 company is employing around about 8,000 workers. The Respondent No. 2 is the recognised union of the Respondent Company namely Mahindra and Mahindra Limited.

2. The Complainant had joined the service of Respondent No. 1 Company on 18th October 1979 then he was selected as Mechanic-B. However, the designation was given to him as Mazdoor. It is alleged by the Complainant that at the time of his selection, he was holding the requisite qualification and had completed I.T.I. Diesal Mechanic Course. He was having one years apprenticeship experience in Diesel Mechanic Trade in Scindia Shipping Corporation. After joining the Respondent Company in October, 1979 the Complainant had worked in Engine Assembly Department (Mechanic-B), TTC Assembly Department and Final Assembly Department of the Respondent No. 1 Company.

3. It is contended by the Complainant that the Respondent No. 1 company was used to give artificial breaks in service of the Complainant as well as other thousands of workers. This was purposely done in the case of technically qualified and skilled workers in collusion with the Respondent No. 2 Union as the Respondent No. 1 company and Respondent No. 2 Union have signed the settlement behind back to the workers and with the *malafide* intention to deprive the workers, from the benefits and previleges of permanency. It is the case of the Complainant that as per letter dated 4th October 1985 the Respondent 1 company had confirmed him as Mazdoor from the date of the letter. This confirmation was in the final assembly department. It is the say of the Complainant that he had joined the service of the Respondent No.1 company in October, 1979 and had completed un-interrupted service of 240 days as contemplated under order 4(*c*) of the Model Standing Orders. The company ought to have given him the status, benefits and previleges of the permanent workman in Assemblers Grade. The company had committed the breach of the above said standing order and it is amounting to an unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

4. It is the case of the Complainant that the Respondent No. 1 Company and the Respondent No. 2 Union had entered into the settlement or agreement which is contrary to the aforesaid provisions of standing orders S.O. 4(*c*) and thus they have deprived the thousands of workers including the Complainant from getting benefits, status and previleges as of permanent workmen and thus the Respondent Company is engaged in unfair labour practices under Item 6 of Schedule IV of the Act.

5. As per the letter dated 8th November 1987, the Respondent No. 1 Company had re-classified the Complainant as Mate. Prior to that the Complainant had given two letters to the Company *i.e.* letter dated 6th October 1987 and 14th October 1987 and it was brought to the notice of the company that 51 vacancies of Assemblers were filled in by the Company, however, the company had failed to give Assembler's grade to the Complainant while giving promotion to these 51 workers, as the Respondent No. 2 Union had taken the keen interest in the promotion of these 51 workers. The Complainant was intentionally discriminated by the Respondent No. 1 Company in collusion with the Respondent No. 2 Union. It is the say of the Complainant, that he is not a member of the Union and hence the undue favour is shown to these 51 workers and thereby Respondent No. 1 has committed the unfair labour practices under Item 6 of Schedule IV of the MRTU and PULP Act, 1971.

6. On 2nd May 1988 the complaint was filed by the Complainant before the Commissioner of Labour. On 17th June 1988 the Commissioner of Labour wrote the letter to the Respondent No. 1 Company and the meetings were held in between the Complainant and the executives of the Respondent No. 1 Company, in the office of the Assistant Commissioner of Labour Shri T. G. Chorge. The Respondent No. 1 Company by its letter dated 13th July 1988 had refused to consider the claim of the Complainant regarding the Assemblers Grade. It is the say of the Complainant that as he had complained to the Commissioner of Labour, against the Respondent No. 1 Company his claim was rejected and the unfair labour practice under item 7 of Schedule IV committed by the company by making such discrimination.

7. On 27th July 1988 the Complainant had received the company's letter dated 18th July 1988. As per this letter the Complainant has got promotion as Assembler, which is effective from 1st May 1988. This letter has been received by the Complainant without prejudice to his right and contentions in the matter of his claim. The Complainant had again informed to the Respondent No. 1 Company that he should have been given the post of Assembler w.e.f. 1st July 1980 *i.e.* after completion of his 240 days service, in the company. It was informed by the company to the Complainant that this claim of the Complainant cannot be entertained. It is contended by the Complainant that the Respondent Company has exploited the un-employment situation in the Nation and thereby keeping the thousands of workers temporary for years together. The company is forcing to these workers to accept the terms of employment contrary to the statutory provisions of the Model Standing Orders. Hence, the unfair labour practices under item 10 of Schedule IV is committed by the Respondent Company.

8. In this complaint it is prayed by the Complainant that it be declared that the Respondent No. 1 Company has engaged in unfair labour practices under items 5, 6, 7, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. However, learned Counsel of the Complainant contended that at the time of hearing of the matter that presently the claim of the Complainant is restricted to the Prayer clause 'C' *i.e.* regarding direction to be given to the Respondent No. 1 Company to give status, and previlege and all benefits attached to the post of Assemblers to the Complainant from the date he has completed 240 days continuous service in terms of Model Standing Order.

9. In the Written Statement filed at Exh. C-2, the Respondent No. 1 Company has submitted that this complaint is misconceived and not maintainable as it is barred by limitation. The cause of action of the alleged unfair labour practices arose in July, 1988 and the present complaint is filed on 7th October 1988. Thus, it is barred by time. The Complainant has not challenged the settlement arrieve at with the second Respondent Union, which is the recognised Union under the Act and hence the complaint is not maintainable as the settlement is binding on all the workers including Complainant. The Company is engaged in the manufacture of Jips and Trucks, depending on the Army and Exports orders. For the Jips and Trucks the Respondent company is required to undertake the production and for that purpose require to employ the temporary workmen from time to time. This peculiar nature of Army and Export orders has been recognised by the second Respondent since the last 20 years and the settlements have been arrived at between the company and the 2nd Respondent Union, keeping in mind the above factor.

10. The present strength of the employees has been decided upon from time to time between the company and the 2nd Respondent Union. The permanent strength was fixed on the basis of 50 vehicles per day in the past. As the production has increased, the permanent strength was fixed on the basis of level of production of 60 vehicles per day in the year 1984. In the year 1982, the Engine Assembly was shifted from Kandivali plant to Igatpuri Plant. This led to the problem of surplus labour. The expansion of the plant was not possible in Mumbai and the company was required to shift the plant to Igatpuri. This matter was discussed with the representative of 2nd Respondent Union and the settlement was arrieved in April, 1982 and it was decided to protect the temporary workmen by continuing them in the employment of the company in the available categories with the normal breaks.

11. In view of the settlement of April, 1982, the temporary workmen on roll on 31st October 1981 were continued in the employment with the normal breaks. The question of confirmation of protected temporary workmen came to be discussed with the Respondent No. 2 Union and as per settlement of 7th August 1984 it was decided that the temporary employees who were on the temporary roll of the company on 31st October 1980 and who were not confirmed, such 385 temporary employees will be confirmed on 31st October 1984 and the balance of workers will be confirmed @ 50 per month commencing from November, 1984 till the total number of 1062 are confirmed. Thus the Respondent No. 1 Company has submitted that as per the settlement arrieved in between the Respondent No. 1 Company and the 2nd Respondent Union, it is following the policy for making the temporary workmen permanent and this policy is being observed in the case of temporary workmen in the skilled or un-skilled categories.

12. It is submitted by the Respondent No. 1 Company that the Complainant was re-classified in the normal course as Mate (semi skilled-B) w.e.f. 1st November 1984 and continued in the same category as per the settlement dated 19th April 1988. The employment of the factory workman is thus subjected to the terms and conditions of the settlement arrieved in between the Company and the 2nd Respondent Union. In view of this no case has been made out by the Complainant. The Complainant was not paid wages as applicable to the Mazdoor grade and was required to perform the duties as Assembler. The Complainant was paid wages as applicable to the job, designation assigned to him.

13. It is denied by the Respondent Company that the Complainant had completed the un-interrupted service of 240 days as contemplated under Standing Order 4(*c*) of the Model Standing Order in July, 1980. The said Standing Order is not applicable in view of the various settlement and understandings arrieved at between the company and the 2nd Respondent Union. It is denied by the company that it is exploiting the unemployment situation in the Country and thus it is prayed for rejecting this complaint.

14. In the written statement of Respondent No. 2 Union filed at Exh. CA-2, it is submitted that none of the unfair labour practices alleged by the Complainant against the Respondent No. 2 Union. the complaint is not maintainable as when there is recognised Union, no complaint relating to the unfair labour practice can be filed by an individual workman except through and by the recognised Union. It is denied by the Union that the Model Standing orders are statutory conditions of service, particularly where there are certified Standing Orders. There are no allegations of non-implementation or failure to implement the Certified Standing Orders. The Complainant had never approached to this Union for any of his grievances during his employment since 1979 till today.

15. The Respondent No. 2 Union has denied the Complainant's grievance against the Respondent No. 1 Company regarding discrimination and un-merited promotion to the 51 workmen. Thus it is submitted by the Respondent No. 2, that no case of unfair labour practice has been made out and prayed that this complaint be dismissed for want of any substance.

16. On these pleadings of the facts, my Learned Predecessor has framed the issues at Exh. O-2, as below :—

Issues

(*1*) Whether the Complainant proves that the Respondent has engaged in unfair labour practice under item Nos. 5, 6, 7, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 ?

(*2*) Whether the Complainant is entitled to any relief as prayed for ?

(*3*) What order ?

My findings on the above issues are as under for the reasons stated herein below :—

(*1*) Yes, under items 6 and 9 of Sch. IV of MRTU and PULP Act, 1971.

(*2*) Yes, in terms of prayer clause 9(*c*) of complaint.

(*3*) As per the final order below.

Reasons

17. *As to the Issue No. 1.*—This issue pertains to items 5, 6, 7, 9 and 10 of Sch. IV of the MRTU and PULP Act. Before discussing the issue, it necessary to find out whether the cause of action for filing or this instant complaint is continuous cause of action and what are the effects and consequences of the facts as the Complainant had accepted certain benefits under the settlement between the Respondent No. 1 Company and the Respondent No. 2 recognised Union. So far as maintainability of the present complaint is concerned, the cause of action in the matter never ceased to exist when the Complainant became permanent mazdoor. The cause of action is recurring if the Complainant was to make permanent after putting 240 days of service. It is cause of action not ceased to exist when the Complainant has got the order of his permanency. Thus, the benefits of permanency, which were conferred on the Complainant on 1st October 1985 when the Complainant has got the order of his permanency. Thus, the benefits of permanency, which were conferred on the Complainant on 1st October 1985, ought to have been conferred on him after completion of 240 days of service, if it is to be held that such situation is in existence, then the complaint itself is maintainable. If a person is aggrieved or deprived from getting certain benefits by the Respondent No. 1 Company or on account of the settlements in between the Respondent No. 1 Company and the Respondent No. 2 Union and if the benefits of permanency are entitled on account of lawful provisions of the Model Standing Orders, the Complainant is entitled for it, then the cause of action is continuous, it cannot cease to exist when the Complainant became permanent employees of the Respondent No. 1 Company. The breaks in service as alleged by the Complainant if artificial or on account of the end of the work has to be seen in the light of the adducing evidence. The letter at Exh. U-57 shows that on the satisfactory completion of the prescribed period of probation (probation period is not specified), the Complainant became permanent employee of the Respondent No.1 Company. The letter at Exh. U-58 reclassified the Complainant as mate the settlement filed on behalf of the company are at Exh. C-5. It is manifestly clear from the record that without prejudice to his right of permanency and on giving such understanding to the Respondent company, the Complainant had accepted the benefits of the settlement and the promotion or permanency status conferred on him. It clearly means that the Complainant had never waived his right of challenging the act of the Respondent company regarding the non confirring of the benefits of permanency on him on completion of 240 days of service. The terms and conditions of all the settlements in between the Respondent No. 1 Company and the Respondent No. 2 Union how can come in the way of the Complainant for getting rectified the injustice meted out by him. In view of this and the protest letters given by the Complainant from time to time after getting permanency status and reclassification of his service as mate clearly shows that the cause of action for filing of this complaint is of recurring nature. The complaint is maintainable. For these reasons, in his order on the application of condonation of delay, my Learned Predecessor at Exh. U-3 has given the elaborate reasons regarding this. There is no point in reiterating those facts. Hence, it is manifestly clear the complaint is maintainable and the settlements in between the Respondent No. 1 Company and the Respondent No. 2 Union are not coming in the way of the Complainant to seek the justice for breaching the provisions of the Model Standing Orders by the Respondent company.

18. As per the issue No. 1 and the accusation of the complaint, it is the case of the Complainant that the Respondent No. 1 Company had committed unfair labour practice under items 5, 6, 7, 9 and 10 of Sch. IV of the MRTU and PULP Act. Item 5 pertains to 'showing favouritism or partiality to one set of workers, regardless of merits' and item 6 is about 'to employ the employees "badlis, casuals or temporaries" and to continue them as such for years with the object of depriving them of the status and privilege of the permanent employees', item 7 is about the discharge or discriminate against any employee for filing the charges or testifying against an employer in any enquiry or proceeding relating to any industrial law' and item 9 is for 'failure to implement the award, settlement or agreement' and item 10 is about 'to indulge in an act of force or violence'. As pointed out earlier, the claim of the Complainant is restricted to Para 9(*c*) of the complaint. As per clause (*c*) of Para 9 of the complaint, the Complainant has sought the directives to be given to the Respondent No. 1 Company for giving him status and privilege of permanency and of the benefits attached to the post *i.e.* grade of Assembler from the day the Complainant had completed 240 days of continuous service in terms of the model standing orders. Before dealing with adducing evidence, it would be worthwhile to seen that the Respondent No. 2 Union had appeared initially in the complaint and prosecuted the complaint till the cross examination of the Complainant is over and thereafter no one appeared for the Respondent No. 2 Union in the present complaint. The oral evidence of the Complainant and his witnesses and the Respondent No. 1 Company has been adduced. This being the complaint of unfair labour practices under items 5, 6, 7, 9 and 10 of Sch. IV of the MRTU & PULP Act, Chapter V, Sec. 28 of this Act made it very clear that any union or any employee or any employer or any investigating officer can file a complaint before a court competent to deal with such complaints.

19. The Complainant and two witnesses of the Complainant have sworn the affidavits and adduced the evidence in the form of affidavits, so far as the examination in chief are concerned. These affidavits are at Exhs. U-6 to U-8. The Complainant and his two witnesses have been cross examined by the Respondent No. 1 Company. As per these affidavits Exhs. U-6 to U-8, it is stated by the Complainant and his witnesses that the Complainant had joined the Respondent No. 1 Company on 18th October 1979, he was given designation as Mazdoor by the company, though he was selected as Mechanic-B. At the time of joining of the service, the Complainant had possessed the technical qualification. The Complainant had worked in the Engine Assembly Department (Mechanic-B) TTCE Assembly of the Company. In the year 1982, he was working in the Final Assembly Department of the company and during his service the Respondent No. 1 Company used to give artificial breaks in services of these persons. The Complainant had performed the duties of the Assembler, however, received wages in the grade applicable to Mazdoor. After 6 years of putting the service, the Complainant was confirmed on 1st October 1985 as mazdoor. In his affidavit Exh. U-6, it is stated by the Complainant that he had completed uninterrupted service of 240 days in the company in and around July, 1980. In his cross examination by the Respondent No. 1 Company, it is admitted by the Complainant that there is no documentary evidence to show that he was selected as Mechanic-B. It is further admitted by him that no complaint was filed by the Complainant, when he had been asked to work as mazdoor then. The Complainant has also admitted that initially he was the member of the Respondent No. 2 Union. However, he cannot say about the settlement then taken place in between the Respondent No. 1 Company and the Respondent No. 2 Union. Annexure-F of Exh. C-5 was shown to the Complainant. On page No. 80 of Exh. C-5 the Complainant had denied his signature on it. Annexure-F is about the acceptance of the settlement dated 3rd June 1987 by the Complainant. This settlement was taken place between the Respondent No. 1 Company and the Respondent No. 2 Union. As per declaration of Annexure-F, the Complainant had accepted the terms of the said settlement. In para 4 of his cross examination, it is reiterated by the Complainant that he had nothing in writing that to show that he was selected for the post of Mechanic-B since 1979. He could not tell whether the company has got the export order or the orders from the Army.

The benefits of the settlement are received by the Complainant from time to time. In this period he did not file any complaint either against the company or against the union. The settlement of Exh. C-5 was never challenged by the Complainant. It is admitted by him that there are certified standing orders of the company. In the cross examination of the Respondent No. 2 witness, in para 7, of Exh. U-6, it is admitted by the Complainant that the basic salary of the Assembler and the Mechanic-B are similar. In the year 1987, the post of Assembler was given to the Complainant.

20. The Complainant's witness Shri Hemantkumar filed his affidavit at Exh. U-7 and stated that one day break was given to him every time and thereafter he came to be re-appointed by the Respondent Company. He had joined the Respondent No. 1 Company in May, 1979. In the cross examination of this witness by the Respondent Company he admitted that UW-2 had accepted all the benefits under the settlement taken place between the recognised union and the Respondent Company. UW-2 Hemantkumar was made permanent on 14th October 1985. UW-3 Chandrashekhar was examined by the Complainant at Exh. U-8. He has stated that the company used to give him 1 to 3 days' break at a time and thereafter he came to be re-appointed in the employment of the company on the same post. In support of his say, he had filed the letters of appointments issued to him by the Respondent Company. The letters of appointments are also filed by the UW-2 Hemantkumar. In the cross examination of UW-3, he has admitted that he did not make any grievance or protest while accepting the temporary appointment letters. Similarly, the promotion benefits were accepted by him without any grievance. It is admitted by him that the company is receiving the orders from Army and also the export orders. However, it is denied that the workload is increased on account of these orders.

21. The oral evidence of the Respondent company's witness Shri Shivaji Ramchandra Vichare is at Exh. C-6. It is stated by this witness that the Respondent No. 1 Company is engaged in the manufacture of commercial vehicles and trucks. The demands for vehicles are fluctuating, hence the company found it necessary to employ temporary workmen from time to time depending upon the exigencies of work. The service conditions of the workmen working in the Company are governed by various settlements signed between the Respondent Company and the Respondent No. 2 Union. This practice is being followed since the functioning of the Respondent company commenced. The strength of the permanent employees of the company has been decided on the basis of the stabilised level of production. As the production increased, the permanent strength was fixed on the basis of the level of production of 60 vehicles per day in the year 1984. This was done in consultation with the recognised union. The Company had shifted the engine assembly department from Kandivali plant to Igatpuri plant and no extension was possible in Mumbai, and this was done in the year 1982. Due to this, there was surplus labour and in consultation with the union, some settlement was arrived at on 14th April 1982 and it was agreed to protect the temporary workmen who were on the muster roll of the company on 31st October 1981 by continuing them in the employment in available categories in accordance with the practice. While discussing the confirmation of the protected temporary workmen, the settlement dated 7th August 1984 taken place in between the company and the recognised union and it was decided that out of temporary workmen, who are on the muster roll of the company as on 31st October 1981 and who were not yet confirmed, 385 out of them came to be confirmed on 31st October 1984 and the remaining balance were to be confirmed at the rate of 50 per month beginning November, 1984. That was irrespective of the availability of the permanent vacancies. The total number of temporary employees confirmed they were about 1062, in persuance of the above settlement. While confirming the temporary employees in permanent posts, the terms of understandings were arrived at between the Respondent No. 1 Company and the Respondent No. 2 Union, that is narrated by this witness in para 8 of his affidavit at Exh. C-6, Para Nos. 7 to 10. Till filing of this complaint, the Complainant had not made any grievance about his temporary employment. On completion of the probation period, the Complainant was confirmed as Mazdoor with effect from 1st October 1985. This letter of confirmation is at Exh. A to the complaint. The probation letter and the confirmation letters were accepted by the Complainant without any grievance. In the year 1986, there were 51

vacancies for the post of Assemblers. The Complainant had also applied for the said post, however, he was not found suitable. The company had not shown any discrimination against the Complainant. In the cross examination of CW-1 Shivaji Vichare, he has admitted that he was not associated with the recruitment of temporary workers. Before those orders of confirmation, the Complainant had worked as temporary workman. It is further admitted by the CW-1 Shivaji Vichare that the seniority list of the temporary employees is not filed by him. He did not know about technical qualification of the Complainant or the service record of the Complainant. In para 5 of his cross examination, the CW-1 Shivaji Vichare has admitted that it is correct to say that though the Complainant was designated temporary, he was doing the work of permanent nature. He did not know whether the work assigned to the Complainant comes to an end during the break up period of service of the Complainant. In the temporary appointment letters at Exh. U-9 to U-37, there is no mention that on account of increase in work or orders, the Complainant or other persons have been appointed. In Para 6 of the cross examination, it is submitted by CW-1 Shivaji Vichare that the seniority list of the temporary employees and the papers pertaining to the demands of increased vehicles are not filed in this complaint, it may be available with the company. This witness could not tell the reason for not filing of the above said record. In para No. 7 of his cross examination, the witness has admitted that the purpose and necessity of preparing the seniority list of the temporary workers is for appointing them in the next vacancies. The salary and wages of the Complainant was on par with the lowest grade of the permanent workmen.

22. CW-1 Shivaji Vichare has admitted in his cross examination that in his affidavit Exh. C-6 though it is mentioned in para 2 of Exh. C-6 " these orders... exigencies of work " no documentary evidence has been filed to substantiate the abovesaid fact. In para 9 of the cross examination, it is admitted by the said witness that the order book, production schedule etc. and the documents pertaining to it are not filed on record. There are no stipulations in the letter at Exh. U-42 that fluctuation in the production, which is related to the period of temporary employment. CW-1 Shivaji Vichare did not know whether the Complainant has completed 240 days of his employment in between the period 18th October 1979 to 31st October 1980. In para 13 of his cross examination, CW-1 Shivaji Vichare has admitted that the company is governed by the certified standing orders and the said standing orders are silent about the temporary workers. In the appointment letters at Exh. U-44, there is no mention of the word that the appointment has been made due to the temporary increase in the work. The certified standing orders are at Exh. U-53. Thus, from the abovesaid cross examination of the CW-1 Shivaji Vichare and from the documents referred to this witness, it is very clear that there is no specific mention in the appointment letters of the Complainant that it is due to the temporary increase in work. Though the Complainant was designated temporarily, he was doing the work of permanent nature. It is not known to the witness of the company that whether the work comes to an end in the break up period of service of the Complainant. There is no clause in the settlement or in the standing orders for the completion of number of days of service for becoming permanent by the temporary workmen. Similarly, the seniority list of the temporary workmen is not filed in the Court and it is not known to CW-1 Shivaji Vichare whether the Complainant was technically qualified workman for the period of 1979 to 1985. This witness could not say about the number of permanent workers employed in the abovesaid period. Similarly, the number of temporary workmen engaged by the Respondent company in the Automative Division during 1979 to 1985 could not be narrated by this witness. On page No. 10 of the evidence of CW-1 Shivaji Vichare, he admitted that the category of mazdoor is lowered to skilled B category. The Complainant was often placed into the category of mazdoor. In para 16 of the cross examination, CW-1 Shivaji Vichare has admitted that he do not know whether the Complainant was willing to work in the period of unemployment. There are no separate termination letters given to the Complainant for the non-employment period. On page No. 12 of his cross examination, it is admitted by the CW-1 Shivaji Vichare that there were breaks in the services of the Complainant from October, 1979 to March, 1985. The pay slips of the Complainant show the designation like Mazdoor, Engine Mechanic-B. In 1980, the designation of the Complainant is shown as the Assembler. All

these pay slips of the Complainant showing his designations from the years 1979 to 1985 are at Exh. U-56. In para 18 of his cross examination, it is unequivocally admitted by the CW-1 Shivaji Vichare that, "It is true to say that during these periods 1979 to 1985, the permanent workers of the company were doing the work in these grades. The only difference was that the Complainant was temporary and was doing the same work as the permanent workers, were doing. The letters and the reply in between the company and the Complainant as per Exhs. U-59 to U-66 were shown to the witness CW-1 Vichare and his answers recorded, which are discussed in para 20 of his evidence.".

23. After scrutiny of the evidence of the witness CW-1 Shivaji Vichare, it appears that there is no clause in the certified standing orders regarding the " permanency " of the temporary workers. On perusal of the certified standing orders filed on record at Exh. U-53, it is clear from clause No. 30 of the order that nothing contained in this standing orders shall operate in derogation of law for the time being in force or to the prejudice of any right under a contract of service, custom, usage or an agreement, the settlement or award applicable to the establishment. As per the model standing orders, clause 4(*c*), *badli* or temporary workman, who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days of uninterrupted service in the aggregate in any other establishment during the period of preceding 12 calender months shall be made permanent in that establishment by order in writing signed by the Manager or any person authorised in that behalf by the Manager irrespective of whether or not, his name is on the muster roll of the establishment throughout the period of the said calender months. As per the explanation of this clause 4(*c*), the period of uninterrupted service caused by the cessation of work, which is not due to any fault of the workman concerned, shall not be counted for the purpose of computing 190 days or 240 days; or as the case may be, for making a *badli* or temporary workman as permanent. It is an undisputed fact that the Complainant in this case had put the service of uninterrupted nature as there is no mention of anything regarding the cessation of work in the appointment letters or termination orders of the Complainant. The model standing orders will prevail over the certified standing orders. If there is any inconsistency between the model standing orders and the certified standing orders, the model standing orders will prevail. In this regard, the import of the ruling reported in *1991-I-CLR-653* Municipal Corporation of Greater Mumbai *versus* Laxman Saidu is required to be taken into consideration. In the model standing orders clause 4(*c*), the temporary workman becomes permanent after completion of 240 days of the service. In this case, 240 days of service was put by the Complainant in the Respondent Company. By virtue of the model standing orders, a statutory condition of service has been introduced. Clause in the settlement, which is derogatory or inconsistent with the provisions of the model standing orders will not be of any use as that will defeat the purpose of the Express of the model standing orders.

24. The Learned Counsel for the Respondent Company has argued that the settlement at Exh. C-5 has not been challenged by the Complainant. The Complainant has accepted the benefits of the said settlement and hence the Complainant is now estopped from taking such stand. Exh. B of the written statement is admitted by the Complainant, as per his evidence at Exh. U-6. It is also contended by the Learned Counsel of the Respondent Company that the clause 4(*c*) of the model standing order is not applicable in this case. The Learned Counsel of the Complainant has argued that the thousands of workmen came to be appointed by the Respondent company in this fashion and this practice was prevailing there from years together. The recognised union has given the cold shoulder to the grievances of the workmen. As per para 21 on page No. 15 of the CW-1 Shivaji Vichare's evidence and other materials on record, the artificial breaks given to the Complainant are to be taken into account for computing 250 days service period, of the Complainant. Thus, the Complainant is the person, who is directly affected on account of the injustice, it is not out place for the Complainant to file this complaint. So far as the present Complainant is concerned, the company own record shows that the Complainant had worked as Mazdoor, Mechanic-B and Assembler. In view of this, the complaint is maintainable and it is not barred by limitation.

25. The Learned Counsel for the Respondent company cited the ruling reported in *2001 II CLR 487 (I.T.C. Ltd.) V/s. S. Mariadasan,* and submitted that in the abovesaid matter the complaint of unfair labour practice, which was filed by the recognised union, came to be dismissed in view of the settlement between the company of that case and the recognised union. On the very next day, two workmen have filed complaint of unfair labour practices on the same allegations. In that complaint, the Respondent had given an application of non maintainability of the complaint. It is held that in view of the decision of the Supreme Court in the case of Shramik Utkarsha Sabha *V/s.* Raymond Woollen Mills *(1995 I CLR 697)* the Industrial Court ought to have decided the application of the maintainability of the complaint first as it goes to the very root of the complaint. So far as our case is concerned, the aggrieved workman has filed this complaint against the company and the recognised union, and this complaint is maintainable.

26. It is nextly submitted by the Learned Counsel of the Respondent Company that as per the ratio laid down in the ruling of the Honourable Supreme Court in the case reported in *1985 I CLR 103* - Balmer Lawrie Workers Union *Versus* company. In view of the settlement taken place in between the Respondents, this complaint ought not to have been filed by the Complainant. In the reported ruling, the constitutional validity of Sec. 2(*b*) of the MRTU and PULP Act was challenged before the Supreme Court and as per the ruling, the constitutional validity of above Sec. was upheld by the Supreme Court and it was held that the abovesaid Sec. is not violating the fundamental freedoms guaranteed to the citizens under Art. 19(*a*) and 19(1)(*c*) of the Constitution of India. The learned Counsel of the Respondent company also relied on the ruling reported in *1990 I CLR 191* (Bhartiya Kamgar Sena *Versus* M/s. Consolidated Pneumatics Tool Company (India) Ltd., and the ruling reported in *2001 II CLR 359* (Warden & Co. *Versus* Akhil Maharashtra Kamgar Union. In the earlier ruling, the complaint filed by the petitioner Bhartiya Kamgar Sena was not found maintainable and it was not coming within the ambit of item 5 of Sch. IV of the MRTU and PULP Act. In the ruling of Warden & Company, the complaint was filed by the workmen of unrecognised union and those workmen were deleted and unrecognised union prosecuted the complaint. It was held therein that it is not the exclusive right of a recognised union to institute and prosecute a complaint under the Act and such complaint can be maintained by the unrecognised union.

27. The Learned Counsel for the Respondent Company relied on the ruling reported in *1998-I CLR 01* (P. Virudhachalan *Versus* Lotus Mills; *1983 LAB IC 1944* (M. G. Jadhav *Versus* W. M. Bapat & Others. *1991 II CLR 176* (May & Baker Ltd. *Versus* Shri Kishor Jaikisandas Icchaporia & others, and *1994 I CLR. page 1022* (Dattatrya Shankarrao Harade *Versus* Executive Engineer, Chief Gate Election Unit No. 2, Nagpur and Anr. I have gone through the import of the abovesaid rulings and find that the principles innunciated in these rulings are not applicable to our case. The settlement that has been taken place between the Respondent company and the union cannot prevent the Complainant to prosecute his claim for enforcement of lawful provisions of the model standing orders. The terms and conditions of the settlement in between the Respondents will not have the overidding effect on statutory provisions of law. It is not case of the to claim of advantageous part of the settlement. Here is the case in which the settlements are silent on the point of keeping the service of temporary worker and length of temporary service require to part by them for permanency to them. In the ruling of May and Baker Ltd., the Appellant company had paid the suspension allowance to the suspended workman, *i.e.* the Respondent No. 1. There was certified standing orders and also Sec. 10-A of the S. O. Act. The single Bench of the Honourable High Court held that the concerned provisions of the model standing orders being more beneficial than the provisions of Sec. 10-A of the Act, the former would prevail. No such question is involved in our case. Hence, the import of the above ruling is also not applicable to our case. In the ruling of *1994 I CLR 1022* in D. S. Kharade *Versus* Executive Engineer, the question of temporary employees and their permanency, who are governed by the Kalelkar Award, was arisen. Hence, the facts of that case are distinguished from the facts of our present case.

28. The learned Counsel of the Complainant has also relied on the rulings :—

1. 1996 I CLR 680 (SC);

2. 1991 II CLR 474 (Bombay HC);

3. 2001 II CLR 982 (Bom.);

4. 2001 III CLR 57 (Bom.);

5. 1990 I CLR 220 (Bom.);

In the first ruling, for 5 to 6 years the employees of the Forests Department were kept temporary. It is held therein that the Chief Conservator of Forests is the guilty of unfair labour practice. In the ruling of the State of Maharashtra *Versus* Parvatibai P. Salvi in *1991 II CLR page 474,* the labourors on daily wages employer for carrying on fruit nursery activity were not made permanent. It has been held that it is not an unfair labour practice under item 6 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. In the ruling of R. P. Sawant *Vs.* Bajaj Auto Ltd. in *2001 II CLR 982,* the appointments of the workmen were made on temporary basis for a fixed period of 7 months with a break of varying period in each case. As a result of this practice, it was found that no temporary employee would complete 240 days' service in a period of 12 months. The workmen of this case were employed to do permanent and perennial work, the model standing orders were not followed by the company while making these appointments. The very object of the Act was not to deny the permanency benefits to the workmen. By adopting this practice, it was held that the company has indulged in unfair labour practice under items 6 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. Thus the facts of Bajaj Auto Ltd. case are similar to the facts of our case and the import of the abovesaid ruling and the ratio laid down in, it is squarely applicable to our case. Similarly, in the case of Divisional Manager, Forest Development Corpn. of Maharashtra, Nashik *Vs.* C. A. Jadhav in *2001 III CLR 57.* The ratio laid down therein for regularisation of the workmen who had completed 240 days service, is fully applicable to our case. In the ruling of Ichalkaranji Co-operative Spinning Mills *Vs.* Deccan Co-operative Soot Girni Kamgar Sangh in *1990 I CLR 220.* The same principle is upheld in this case and those who have completed 240 days of service, were found eligible to get the benefit of permanency. The learned Counsel for the Complainant has also relied on the ruling in *1987 II CLR 61; 1996 III LLJ 666; 1992 (64) FLR 870;* and *1995 II CLR 787*. As per the import of the abovesaid rulings, it is held that the model standing orders framed by an appropriate Government shall prevail over the certified standing orders, the model standing orders will automatically override the existing standing orders, unless the certifying officer is of the view that they are less advantageous.

29. Applying the import of the above rulings relied upon by the Complainant of our case, it is clear that the confirmation letter of Exh. H shows that the present Complainant was made permanent with effect from 1st October 1985. The Complainant had joined the services of the Respondent company in October, 1979. In the intermittant period of October, 1979 to October, 1985, the Complainant had worked there in the assembler grade and did the permanent work. The Respondent company ought to have given him the status and benefits and privileges of a permanent workman in the assemble grade in or around July, 1980, instead of October, 1985. But that has not been done in the present case and hence violation of item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act taken place. Accordingly, Issue No. 1 is answered. There is no data of other employees, who were appointed by the Respondent company in such a fashion for years together with the object of depriving them of the status and privileges of the permanent employees. But, however, so far as the present Complainant is concerned, it can certainly be said that with the object of depriving the Complainant, the status and privileges of the permanent employees. This has been done by the Respondent company and hence the Respondent No. 1 company is guilty of commission of unfair labour practices under items 6, 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is clear from the record that the benefits of the provisions of the model standing order clause 4(*c*), are not being given to the Complainant, by the Respondent company and hence the Respondent company failed to implement the award, settlement or agreement clause *i.e.,* item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. As the claim of the Complainant is restricted to this, the Issue No. 1 is answered to this extent.

30. *As to the Issue No. 2.*—As pointed out earlier the Complainant is entitled for the relief of permanency in terms of Para 9(c) of the complaint and it is, therefore, necessary to direct the Respondent No. 1 company to give status and privileges and all the benefits attached to the post of grade of assembler to the Complainant from the day he has completed 240 days of continuous service in terms of clause 4(c) of the model standing orders. The pay slips of the Complainant collectively filed under the list Exh.U-56 for the period from 1979 to 1985 shows the designation of the Complainant as mazdoor, mak etc. The various appointment letters filed under Exh.U-54 shows that there is nothing in those letters that on account of receipt of particular order and exigencies of work, the Complainant and others were appointed by the Respondent company. Considering the facts and circumstances of the present case and the evidence on record, it is clear that the Complainant is entitled to get the permanency status and privileges and all the benefits attached to the post *i.e.* the grade of assembler from the day he had completed 240 days of continuous service. Accordingly, Issue No. 2 is answered and I deem it proper to pass the following order :—

Order

1. Complaint (ULP) No. 1150 of 1988 is hereby partly allowed.

2. It is hereby declared that the Respondent No. 1 company has engaged in unfair labour practices under items 6 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971. The Respondent No. 1 company is hereby directed to desist from continuing with this unfair labour practices.

3. It is hereby directed to the Respondent No. 1 company to give status, privileges and all benefits attached to the post/grade of Assembler to the Complainant, from the day he has completed 240 days of continuous service from October, 1979 *i.e.* status of permanency from in and around July, 1980.

4. No order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 6th February 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 15th February 2002.

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BEFORE SHRI U. R. PATIL, PRESIDENT, INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

REVISION APPLICATION (ULP) No. 224 of 2001.—IN COMPLAINT (ULP) No. 197 of 1997.—Satyaprasad Tiwari, R. No. 1, Amisha Niwas, Gavdeo, Tembhipada, Bhandup (W), Mumbai 400 078.—*Applicant—versus*—(1) M/s. Amforge Industries Ltd., United Bank of India Bldg., Sir P. M. Road, Mumbai 400 001; (2) Shri A. V. Kulkarni, Judge, 3rd Labour Court, Mumbai.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U and P.U.L.P Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri U. D. Bhatt, Learned Advocate for the Applicant.

Shri S. N. Desai, Learned Advocate for Respondent.

Oral Judgment

(Dated 13th March 2002)

1. The present Revision Application is preferred by the Original Complainant feeling aggrieved of the judgment and order dated 31st October 2001 passed by the 3rd Labour Court, Mumbai whereby the said Court dismissed the complaint of the Complainant with cost of Rs. 200 to the Company.

2. The brief facts giving rise to the case may be stated as follows :—

It is seen that the Complainant Shri Satyaprasad Tiwari joined the services of Respondent *i.e.* Amforge Industries Ltd. in March, 1955 as a worker. The said employee put in services for about 42 years *i.e.* prior to 4th March 1997 *i.e.* alleged superannuation at the age of 60 years. Complainant states that he was born in the month of May, 1939 and therefore his superannuation was in the month of May, 1999, but he has been retired by the Respondent pre-maturely on 3rd March 1997. It is contended that he was drawing monthly salary of Rs. 5,000 p.m. It is contended that on 17th February 1997 Respondent served a notice to the Complainant and he was compelled to retire on 3rd March 1997. He was also asked to collect his dues in full and final settlement. The Complainant sent a legal notice dated 5th March 1997 stating therein that his services were illegally terminated though he had not completed 60 years of age. There was no response to his notice. Complainant states that he received a cheque from the Respondents in full and final settlement of his dues under protest. Complainant in short says that his services were terminated illegally on patently false reasons and therefore there is an unfair labour practice adopted by the Respondent Employer falling under item 1(*a*), (*b*), (*d*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971. The Complainant therefore prayed for reinstatement with full backwages w.e.f. 3rd March 1997.

3. The Complaint was resisted by the Respondent by filing a Written Statement Exh. C-2 and the same may be stated briefly as under :

It is submitted that the Complainant was employed with the Respondent w.e.f. 4th March 1955. No person below the age of 18 years can be employed and the Respondent employer never employed any person below the said age. Complainant served with the Respondent for about 42 years. Therefore, the Complainant's submission that he had not crossed the age of 60 years is not believable. It is submitted that the date of birth of the Complainant *i.e.* May, 1939 is not believable and because of superannuation he has been rightly retired on 3rd March 1997.

4. The Respondent states that notice of the Complainant was replied by letter dated 11th March 1997. On 1st March 1956 Complainant's age was recorded as 22 years in the P. F. declaration Form, which was signed by him. As per the said record, Complainant ought to have completed 60 years of age in the year 1994 itself and he was benefitted by being in the employment till March, 1997. In the year 1975 the Complainant had given his date of birth as '1935' when the Respondent collected the details of all the employees and the same is updated in the Company's record. It is contended that Complainant has no legal right to continue in service after crossing the superannuation age of 60 years and his retirement is fair, legal and proper. On these and other grounds, the Respondent requested to dismiss the complaint.

5. I have called for the record and proceedings and gone through the same. Heard Mr. U. D. Bhatt, learned Advocate for the Applicant and Mr. S. N. Desai, learned Advocate for the Respondent. The following points arise for my determination, with my findings thereon, as below :—

Points.—

(*i*) Whether Revision Application (ULP) No. 224/2001 is to be allowed by setting aside the impugned order dated 31st October 2001 passed by the 3rd Labour Court Mumbai ?

(*ii*) What order and relief ?

Findings.—

(*i*) Point No. 1 : No.

(*ii*) Point No. 2 : Please see order below :—

Reasons

6. *Point No. 1.*—Record and Proceedings reveal that the Complainant Mr. Tiwari joined the services as a worker with the Respondent in March, 1955 and as such he has put in service for about 42 years. It is seen that the Complainant claims that he was born in May, 1939 and therefore his superannuation date was May, 1999. This fact is denied by the Respondent employer and it is asserted that the date of birth of the Complainant, as per the record, is 1935 and he has been rightly retired at the age of 60 years on 3rd March 1997. In view of this controversy between the parties, Complainant has given the oral evidence before the Labour Court and asserted the contentions raised in the complaint and in support of his evidence he has produced on record an extract of Family Register issued in 1993 by the Village Panchayat Exh.U-7. On the contrary, the employer has examined one witness Shri Chandrakant Yadav, the Chief Time-keeper and he has produced on record at Sr. No. 1 of Exh. C-5 the xerox copy of the application form filled in by the Complainant at the time of joining the service and at Sr. No. 2 has produced the P. F. Form signed by the Complainant.

7. Now the main contention and grievance of Mr. U. D. Bhatt, learned Advocate for the Applicant is that the 3rd Labour Court has not properly appreciated the facts and circumstances and wrongly in the impugned judgment referred Sec. 61, 64, 65 and 77 of the Indian Evidence Act. Mr. Bhatt canvassed that when the document Exh.U-7 was given by the Complainant indicating his date of birth as May 1939, the employer should have accepted the same and should have retired him after 60 years of age *i.e.* in the month of May, 1999, but erroneously and prematurely retired the Complainant on 3rd March 1997. In support of his submission Mr. Bhatt submitted that as per Sec. 35 of the Indian Evidence Act, the Labour Court should have accepted the birth-date mentioned in the extract issued by the Village-Panchayat, in which the date of birth of the Complainant is show as 'May, 1939', but the Labour Court has not taken cognizence of the said document and wrongly accepted the statement made by the Respondent's witness and the contentions of the Respondent. The another contention of Mr. Bhatt is that

despite the production of Register of Birth, right from 1993, the employer neither informed the Complainant nor changed the date of birth, as shown in the said Register *i.e.* May, 1939 and thereby there is an illegality while pre-maturely retiring the Complainant and therefore committed unfair labour practice, as mentioned earlier and hence Mr. Bhatt requested to set aside the impugned order of the Labour Court. According to Mr. Bhatt, the learned Advocate for the Applicant, in fact the superannuation period as claimed by the Complainant, is already over in March, 1997 and therefore now only the payment of wages for the period from March, 1997 to 30th April 1999 *i.e.* for about 26 months be considered and awarded.

8. On the contrary, Mr. Desai, learned Advocate for the Respondent opposed the submissions of Applicant's Advocate and submitted that the employer has in fact rightly retired the Complainant on 3rd March 1997 because as per the record *i.e.* Exh.C-5(1) and C-5(2), the year of birth of the Applicant mentioned therein is '1935' and therefore Mr. Desai urged that the Labour Court has rightly considered the said aspect and there is no illegality in the impugned order. In support of his submission Mr. Desai invited my attention to a judgment reported in *2002(92) FLR 773* (State of Uttaranchal & Others *Versus* Pitamber Dutt Semwal). On going through the said judgment, it shows that there was also a problem for consideration regarding the retirement age of the Respondent employee *i.e.* Pitamber Dutt Semwal. The substance of the said judgment indicates that as per the U. P. Recruitment Service Rules, 1974-Rule 2-Constitution of India, 1950-Articles 14 and 226-Date of Birth-As recorded in service book-On receipt of notice for superannuation, a representation made to correct it-Plea and prayer to correct the age was highly belated-Nearly 30 years after the service book was prepared. Provision of Rule 2 cannot be ignored. The Honourable Supreme Court allowed the Appeal preferred by the State of Uttaranchal and set aside the order of the Division Bench of the High Court. Thus relying on the said ruling and the evidence of Respondent's witness, coupled with the documents, referred to above, according to Mr. Desai no case for interference of the Industrial Court under Revision is made out by the Applicant and stressed for dismissal of the Revision.

9. On hearing the rival submissions advanced by the learned Advocates for the parties, it is significant to note that the Complainant *i.e.* Applicant herein Mr. Tiwari joined the services of the Respondent on 5th March 1955. The company has at the time of joining the services by the Complainant filled up the application form and in the said form the date of birth of the Complainant is shown as '1935' and age is shown as '40'. In the said form, a detailed address of the Complainant is given and it shows further that in the past, the Complainant was employed with M/s. Rolex Works for about 1 year as an Apprentice and in M/s. Mukesh Printing Works for about 1 year. Similarly the Complainant has also filled up the Form, as required by the employer in respect of Provident Fund and in the said Form also the year of birth of the Complainant is shown as 1935 and the age about 40 years. In this Form, the Complainant has given the details of his family members *i.e.* wife, 2 sons and 1 daughter and their respective age and also mentioned the present address and the permanent address therein. On going through the said documents minutely, it indicates that the particulars appearing in the said Forms are naturally furnished by the Complainant and the said Forms bear the signature of the Complainant. On this point, such was canvassed by Mr. Bhatt, learned Advocate for the Complainant that the Complainant has denied the year of birth as 1935 and that the same has been wrongly recorded by the employer. Similarly, the Complainant in his oral evidence, claimed that except the date of birth, the other particulars are correct. On this point, it is pertinent to note that the details regarding the information of the Complainant are furnished by him including the age and there was no any ill or wrong motive on the part of the employer to mention the wrong year of birth *i.e.* 1935, as claimed by the Complainant. It is important to note that at the

initial stage, both the forms were filled and for a considerable period, the Complainant had not objected regarding the wrong date of birth, but only prior to about 3-4 years from the date of superannuation, he took pains to produce the extract of the Register, referred to above, issued by the Village Panchayat. In view of these state of affairs, it is necessary to refer Sec. 115 of the Indian Evidence Act and the same is in respect of estoppel. For the sake of convenience, it is reproduced as under :—

> "115, Estoppel-When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

10. In the light of the aforesaid section, when the Complainant gave his particulars in the Application Form at the time of joining the service and in the P. F. Form, giving the year of birth as '1935', now the Complainant cannot deny the said fact. It is because the employer has acted on his declaration and that being the record maintained by the company, it cannot be said that it is wrongly maintained and illegally the Complainant has been superannuated, as referred to above.

11. It is to be noted that when there is a dispute regarding the date of birth between the employer and the employee, in such cases, the School Leaving Certificate is a conclusive proof, as observed in the case law reported in *2000 LIC 2558 (Bom.HC) : 2000 IV Mah. L. J. 108 : 2000 III BCR 847* (Maharashtra State Raod Transport Corporation *Vs.* Yeshwant Sridhar Phadke). On going through the aforesaid case law, in substance it indicates that correction in respect of the birth date is to be made within a reasonable period and the same should be only on an irrebuttable proof. In the light of the aforesaid position, I am of the view that when the Complainant joined the services of the employer, as detailed above, and after passing of considerable period, he should have raised the age dispute within a reasonable period by communicating to the employer that his year of birth is May, 1939 and not 1935, but he failed to do so and only at the time of superannuation, he raised the dispute by lodging a complaint in the Labour Court. I am aware that the Complainant has produced on record the extract issued by the Village Panchayat, wherein his year of birth is shown as May, 1939. On this point, Mr. U. D. Bhatt, learned Advocate for the Applicant canvassed that the said document being a secondary document and a public document, the Labour Court should have accepted the said year of birth of the Complainant. I am unable to accept the said submission for the reason that the primary evidence *i.e.* the Original Register of Birth mentioned by the Village Panchayat in which the Complainant claims to have resided, ought to have been produced. Similarly, only production of the said extract is not sufficient because the Respondent's Advocate in the cross examination of the Complainant, put a question as to whether the Complainant wants to examine the witness from the Village Panchayat on the point of the said extract Exh. U-7, but the Complainant declared to examine the witness. Meaning thereby, no sufficient opportunity to cross examine the author of the said document who maintained the Register of Birth and issued the extract, is made available to the other side and to confront the said extract in the cross examination. Therefore, the said document produced by the Complainant has not been taken into consideration by the Labour Court. As detailed above, when the two documents maintained by the company indicate the year of birth of the Complainant as '1935' and said entry has not been challenged for a considerable period, meaning thereby there was no illegality or wrong and particularly unfair labour practice committed by the employer while retiring the Complainant at the age of superannuation on 3rd March 1997. It is also significant to note that when the issue of such a nature arises before the Court, the Court must be fully satisfied that the material produced by the concerned employee is of a conclusive nature, or to put it differently, it is irrefutable, from which the irresistible conclusion follows that the date of birth as recorded in the record of the employer is erroneous. As detailed earlier, in the light of the documents produced by the employer, the superannuation of the Complainant in fact ought to have been in 1995, but the Complainant has been retired in March, 1997, meaning thereby 2 years more service is availed by the Complainant.

12. On carefully scrutinising the record and proceedings, I am of the view that no apparent error or mistake is committed by the Labour Court to call for the interference of the Industrial Court to disturb the impugned judgment and order because the same is capable of supporting the order passed by the Labour Court. Hence, it is rather difficult to share the submission of Mr. Bhatt to grant the Complainant salary for 26 months *i.e.* right from March, 1997 to 30th April, 1999. As detailed above, I don't find any merit to set aside the impugned order and hence I answer the Point No. 1 in the *Negative*.

13. *Point No. 2.*—In view of the foregoing reasons and findings on Point No. 1, Order follows :—

Order

Revision Application (ULP) No. 224 of 2001 is dismissed.

No order as to cost.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Mumbai.

Mumbai,
Dated the 13th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 28th March 2002.

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IN THE INDUSTRIAL COURT AT PUNE

APPLICATION (MRTU) No. 2 of 2000.—Kalyani Seamless Supervisor, Staff Association, C/o. Shri Uday Gaikwad, C-9, 'Trimurti Vihar', Patas Road, Baramati, Dist. Pune 413 102.—*Applicant—Versus*—The Indian Seamless Metal Tubes Ltd., Work II, B-13, M.I.D.C., Baramati, Tal. Baramati, Dist. Pune 413 133.—*Non-Applicant.*

In the matter of Application under section 11 of the M.R.T.U. and P.U.L.P. Act, 1971, for the registration as a recognised Union.

Present.— Sudhakar K. Binwade, Member, Industrial Court, Pune.

Appearances.—Shri. N. A. Kulkarni, Advocate for the Applicant.

Smt. A. A. Wachasunder, Advocate for th Non-Applicant.

Oral Judgment

(Dated 6th March 2002)

1. The Applicant Union has filed this application for the registration as a recognised Union in the Non-Applicant establishment as per the provisions of Section 11 of M.R.T.U. and P.U.L.P. Act. The case of the Applicant Union, in brief, is as under :—

2. The Applicant Union is registered under the Trade Unions Act under Certificate No. PN-3212 dated 7th December 1999. According to the Applicant Union, majority of the employees working in the Non-Applicant establishment have accepted its membership. The Applicant Union has filed the list of those employees along with the application and shown the percentage of the total number of employees of the Undertaking in Para 3 of the application. The Applicant has also produced copy of its Constitution and come with a case that it has not intigated, aided or assisted the commencement or continuation of a strike among the employees in the Undertaking. Therefore, it is lastly prayed by the Applicant Union that it be granted a recognition under the M.R.T.U. and P.U.L.P. Act.

3. The Opponent establishment has filed pursis at Exh.C-10 and adopted the application Exh. C-7 as its written statement. It has opposed the application mainly on the ground that the Applicant Union has no *locus-standi* to seek recognition under M.R.T.U. and P.U.L.P. Act. According to the Non-Applicant, the name of the Applicant Union itself indicates that it is an Association of supervisory staff and as such it has no right to represent the workmen. In this connection, it is the case of the Non-Applicant that supervisory staff is drawing the salary in excess of Rs. 1600 per month and as such they cannot be said to be workmen under the Industrial Disputes Act. Further, it is the case of the Non-Applicant that majority of the employees working in the establishment, have not became the members of the Applicant Union and as such it is necessary to examine this aspect before granting recognition to the Applicant Union. For these reasons, it is lastly prayed by the Non-Applicant that the application be rejected.

4. Heard Shri N. A. Kulkarni, the learned Counsel for the Applicant Union and Smt. Wachasunder, the learned Counsel for the Non-Applicant. In view of their submissions, following points arise for my determination :—

(*i*) Whether the Applicant Union has a membership more than thirty percent of the total number of employees employed in the Non-Applicant Undertaking ?

(*ii*) Whether the Applicant Union has complied the requisite condition specified in section 19 of the M.R.T.U. and P.U.L.P. Act ?

(*iii*) Whether the Applicant Union is entitled for registration as a recognised Union in the Non-Applicant Undertaking ?

(*iv*) What order ?

5. My findings to the above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Yes.

(*iv*) As per final order.

Reasons

6. Smt. Wachasundar, the learned counsel for the Non-Applicant, at the out set, has drawn my attention towards the name of the Applicant Union and tried to convince me that this name of Applicant Union itself indicates that it is an Association of supervisory staff. According to her, the supervisory staff of category is drawing salary in excess of the Rs. 1600 per month and therefore, they cannot be said to be workmen and as such the Applicant Union has no *locus-standi* to file this application. It is no doubt true that the Applicant Union is known as Kalyani Seamless Staff Association. But I think that only because of this reason, the submission made by Smt. Wachasundar, Advocate cannot be accepted. Because, while granting recognition to any Union, the name of such Union cannot be taken into consideration, but the fact as to whether such Union has membership more than thirty per cent of the total number of employees in the Undertaking or not, is required to be taken into consideration. Therefore, I find it very difficult to accept the submissions made by Smt. Wachasundar, Advocate.

7. The Non-Applicant has no doubt come with a case that the Applicant Union does not possess the requisite percentage of the employees for being declared as a recognised Union. Whereas the Applicant Union has come with a specific case that the majority of the employees working in the Non-Applicant establishment have become its members. So as to prove this aspect, the Applicant Union has attached a list of the employees to the application and come with a case that more than 70 Per Cent of the total number of the employees employed in the Non-Applicant Undertaking have accepted its membership. After going through the evidence on record and looking to the facts and circumstances of the case, I find a considerable force in this part of the case of the Applicant Union. Because, as per the order of this Court, the Investigating Officer has verified the membership and other relevant documents of the Applicant Union and submitted his report at Exh. O-5.

8. A perusal of the report of Investigating Officer shows that the Applicant Union has maintained a membership register and the names of about 467 employees are mentioned in the said register for the year 1999 to 2001. The said register was maintained in prescribed form. The Investigating Officer has specifically mentioned the total number of the employees, who has accepted the membership of the Applicant Union in his report and lastly mentioned the percentage of those employees. A perusal of this report clearly shows that in the month of January, 2000, about 378 employees out of 539 employees had become the members of the Applicant Union. Thereafter in the month of February, 2000 to June, 2000 about 450 and plus employees out of 538 employees had become the members of Applicant Union. If we consider this aspect of the matter, then I think that the Applicant Union had a membership more than thirty per cent of the total number of employee employed in the Non-Applicant Undertaking for the period of six calendar months immediately preceding the month of filing this application.

9. Not only this but a perusal of the report of the Investigating Officer further shows that the members of the Applicant Union have paid their subscription at the rate of Rs. 10 per month as per the Constitution of the Applicant Union and the latter has maintained Cash-book and Bank Pass Book to that effect. It also appears that the Executive Committee of the Applicant Union had met intervals and the Minute Book of such meeting is prepared. Considering this aspect, I think that the Applicant Union has complied the provisions of Section 19 of the Act,

Over-all, after going through the evidence on record, it appears to me that the Applicant Union has complied the requisite condition for registration as a recognised Union and as such it is entitled for grant of recognition Certificate. Considering all these aspects I pass the following order :—

Order

(*i*) The application is allowed.

(*ii*) The Applicant Union *i.e.* Kalyani Seamless Supervisor Staff Association be registered as a recognised Union under section 12 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for the Undertaking of the Non-Applicant establishment *i.e.* The Indian Seamless Metal Tubes Ltd., M.I.D.C. Baramati, Tal. Baramati, Dist. Pune.

(*iii*) Issues Certificate to that effect in the prescribed form and an entry thereof be taken in the concerned register.

SUDHAKAR K. BINWADE,
Member,
Industrial Court, Pune.

Pune,
Dated 6th March 2002.

S. S. BUDHKAR,
Jr. Investigating Officer,
Industrial Court, Pune.
Dated 6th March 2002.

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कामगार आयुक्त, महाराष्ट्र राज्य

कॉमर्स सेंटर, ताडदेव, मुंबई ४०० ०३४, दिनांक ४ मे २००२

क्रमांक औसं./औविअ/प्रसिद्धी/निवाडा/प्र-५२/२००१/कार्यासन-७.—ज्याअर्थी औद्योगिक विवाद अधिनियम, १९४७च्या कलम ३९(ब) चे अंतर्गत प्रदान करण्यात आलेल्या शक्तीचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्रमांक औविअ/१०८०/५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम १७(१) खाली सासनास वापरता येण्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य मुंबई यांनाही वापरता येतील.

त्याअर्थी आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७ च्या कलम १७(१) च्या खालील शक्तीचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई हे मे. भोर इंडस्ट्रीज लि., पुणे व या आस्थापनेत काम करणारे कामगार यांचे औद्योगिक विवादाबाबत शासन आदेश क्र. औसं/२००१/औविअ/३९(१२)/कार्यासन-७ दिनांक १६ एप्रिल २००१ च्या संदर्भात औद्योगिक न्यायालय, पुणे यांनी दिलेला निवाडा क्र. ६/२००१ प्रसिद्ध करीत आहेत.

BEFORE SHRI VIDYASAGAR KAMBLE, INDUSTRIAL TRIBUNAL, PUNE

REFERENCE (IT) No. 06 OF 2001.—BETWEEN.—M/s. Bhor Industries Ltd. Bhor, District- Pune.—*First Party.*—and—Its Workmen.—*Second Party.*

In the matter of Reference by the appropriate Govt. U/s. 10(*1*) (*d*) of the I. D. Act.

CORAM.— Shri Vidyasagar Kambe, Member.

Appearances.— Shri A. K. Gupte Advocate for the First Party.

Shri. A. Y. Shikarkhane Advocate for the Second Party.

Award

(Dated the 05th April 2002)

The Commissioner of Labour appropriate authority under the Industrial Disputes Act, 1947 referred this dispute for adjudication by its order of reference dated 16th April 2001 by exercising its power under Section 10*(1) (d).* The dispute between Bhor Industries Ltd. District Pune and its workmen is on the matters regarding production of as per settlement 1994 and to find out whether workmens are avoiding for giving norms agreed in 1994 settlement or giving less production or giving sub standard or low quality production, who is responsible for such sub standard or lower standard production, to find out whether for this reason company sustained any loss, if yes, how much. Considering above said facts to find out justifiability in the lock out declared by the company and if the lock out is unjustifiable then whether the concerned workmen are entitled for what benefits.

2. After receipt of this order of reference, statutory notices were issued to the parties. In response to these notices, Shri A. K. Gupte Learned Advocate appeared on behalf of the first party-Company by filing his vakalatnama on 14th August 2001 and Shri A. Y. Shikarkhane learned Advocate for second party workmen on 17th September 2001. On behalf of the workmen statement is filed by Shri Vitthal Karanje General Secretary Bhor Kamgar Union on 14th August 2001. The first party submitted its statement on 12th December 2001.

3. At the out set it is the contention of the union on behalf of the workmen that the bonus of proving various contentions giving rise to the present order of reference and the dispute are at the first instance proved by the Company and the bonus prove the negative is upon the union representing the workmen. Under the circumstances, it would have been just, fair proper and necessary that the order directing the parties to file statement of claim ought to have been issued to the company and not to the union. The union on behalf of the workmen further stated that it is a registered union and recognised under the provisions of M. R. T. U. and P. U. L. P. Act 1971. This union is functioning for last more than 40 years. 1989 settlement expired in October, 1992 and fresh demands for revision in service conditions were made. However, the company retaliated by attacking the leading activist of the union and subsequently by dismissing them. 1994 settlement came to be signed under pressure and coersion by the management. The company delayed signing of the settlement after expiry of 1989 settlement and it took as many

as 44 months for signing of the new settlement. The workers were upset and annoyed because of the anti-union and anti-labour policies adopted by the then leadership of the workers and they made efforts to get rid of such leadership and made efforts to reinstall their own leadership. This was disliked by the management and it was only after a long drawn legal battle that the real leadership of the workers changed. The charter of demands served by the new leadership was not favourably entertained by the company since there was no other alternative but to approach the machinery under Industrial law and the charter of demands are presently pending for adjudication before the Industrial Tribunal as Reference IT No. 5 of 1999. Workers were denied bonus for the year 1999 though such payment has been made in other units of the Company. The company made counter demand upon the workers whereby the company demanded 20 Per Cent increase in production and 20 Per Cent reduction in manning. The company effected a lock-out in Diwali 1999. The workers expressed their inability to consider company's demand of 20 Per Cent reduction in manning and 20 Per Cent increase in production. As a result of this, company started making grievance for the first time that the workers are not giving production as per 1994 settlement in fact workers were regularly co-operating to achieve higher and higher production norms. However, the counter responsibility under the 1994 settlement *viz*. modifications in the machines and the process was never complied with by the company. As a result of this, workers started demanding implementation of management's obligation under the 1994 settlement and effective working of Monitoring Committee. The Company did not respond to the just end fair proposals and straight way resorted to wage deduction indiscriminately month to month. The company started enforcing their novel idea of effecting wage deduction for alleged not achieving the production norms during the period of 1994 settlement *i. e.* for the past period and started making further deductions on the plea that the workers have not achieved the production prospectively. At no point of time company never complained that the workers have not achieved the production norms. The company has not filled in the post that have become vacant on account of either retirement, resignation, death or superannuation, termination etc. and as a result of this, large number of posts are vecant. In the past the production norms and meaning was finalised with the assistance of Pune Productivity Council. The company has failed to arrange required number of workers on assigned work centres timely. The raw material provided was of substandard quality, that the company did not arrange for preventive as well as regular maintenance of machines which are quite old by now, change of shades, non-availability of proper temperature, non maintenance of thermoset coil leakage etc. There are ample lapses on the part of the company. The company made it impossible to the workers to concentrate on their regular working on account of huge wage deductions and allied pressurising activities. The company did not comply with other contractual liabilities like issuing of the uniforms, shoes, non supply of protective wears, non payment of bonus etc. and as a result of this, the workers had no other option to issue notices of strike demanding implementation of various demands. After following the statutory and mandatory requirements the union gave notice of strike. The company did not concede to any of the demands therefore, union was required to resort to strike as per the strike notices. The strike resorted to by the workers was as and by way of last resort as the company did not co-operate with the office of commissioner of labour at Pune, did not negotiate with the recognised union in good faith etc. The strike got prolonged on account of Company's non-cooperative, anti-union and anti labour policies. It was only after the intervention of the Honourable Minister for labour together with the good offices of Local M. L. A. s sitting as well as ex-MLA that the company was required to amend their approach and the parties arrived an agreement and factory started functioning from 1st July 2000. The company did not allow all the workers to report for work after settlement of the strike and kept large number of workers out of work though they had withdrawn the strike and though the company had no right to refuse them work. Therefore the union approached to the court and filed a complaint to that respect. The company was required to take all the workers for work and their claim for wages from 1st July 2000 is pending before the court. The company ultimately was required to take all the workers in employment sometime around January, 2001.

4. After withdrawal of strike and after reporting for work the company drastically changed the working of the factory. The workers under the compulsion and pressure were required to follow new methods. Totally new manning system introduced by the company unilaterally. The workers were required to work as per the new system. It was because of their weaknesses during those days the company bulldozed its decision upon the workers and 1994 settlement was given a total go by. The company reduced the strength of officers, supervisors etc. from the factory. They changed the product mix, transferred various products to their other units, brought substandard quality of material compelled the workers to re-work on material produced at other units. etc. With this in mind, the company issued a notice of lock out date 26th February 2001. The company wanted to clamp a lockout in 8th departments *w. e. f.* 13th March 2001. The statement of reasons given alongwith notice of lock out contains various allegations against the workers and the union. The union replied to the notice of lock out and brought on record the true and correct factual position. The union suggested that the dispute may please be referred to arbitration U/s. 10 A or be referred to adjudication U/s 10(*2*) of the I. D. Act 1947 and also requested the company to appoint Monitoring Committee and also requested for a quality committees consisting of two representatives of each. All such legitimate suggestions were declined by the company as it had plans to attack the workers and had decided to teach the workers a lession for resorting to a strike and for not conceding the employer's demand. At the request of the union the office of Commissioner of Labour Pune intervened in the matter and before commencement of the lockout, after hearing the parties at length was pleased to admit the subject matter of notice of lock out in conciliation on 12th March 2001 in presence of representatives of all the parties. The company ought not to have clamped the lockout as it was pertaining to the same subject matter for which the conciliation proceedings had been already commenced. Inspite of this, company clamped the lock out. The lock-out is totally unfair, unjust and illegal. Inspite of prohibition of lock out company continued it. However, with a view to attempt to come out of the clutches of the law the company tried to plead that the lock out was lifted and a fresh lockout is commenced from 5th May 2001. The lock out is continued and the same has never been lifted. The so called lifting up of lock out followed by non payment of wages for suspension of operations, adjustment of privilege leave against the period of suspension of operations etc. goes to prove that there is no lifting up of lock out in fact. The reasons stated by the company in the lock out notice neither justifiable nor proper or adequate. Hence all the reasons given by the company in the annexure to the lock out notice is illegal lock out. Hence for such illegal lock out company forcibly kept the workers out of employment, deprived them from wages, unemployment is forced upon them by the company for their no fault at all. Hence for the entire lock out period workers are entitled for full wages and all other benefits. With this it is prayed that this Tribunal be pleased to hold that the workers were not avoiding to give production as set out in the agreement of 1994 or that they were not giving lesser production. Further to hold that the management was responsible for lesser production, if any for the reasons attributable to the management as stated above. Further hold that the workers were not responsible for any second quality material produced if any and the management was responsible for the same. Further to hold that necessary steps are required to be initiated against the erring officers of the management of the company for monetary loss to the company. Further hold that the workers are entitled to full wages and other incidental benefits for the entire period during which they were denied work and wages during the period commencing from 13th March 2001 onwards until every workman is allowed to report for work.

5. As against this, to justify its action statement is filed on record by the first party company which is at Exh. C-5. At the outset it is contended by the company that demand of the second party is not true, not legal and is also not *bonafide.* Further it is stated by the company that the order of reference is very vague and does not concern to any particular period. Hence the order of reference deserves to be dismissed summarily. With this company has stated certain facts which gives rise to this dispute.

6. The company entered into a settlement with the union on 30th November 1994. The survival of the company itself is in danger since long time and the company is struggling for its survival. Union and the workmen are aware about it. This fact reveals from the recital of 1989 settlement where in it is mentioned with these words :—

"Bhor Plant has been making losses every month for quite some time now. The situation has deteriorated."

1994 settlement is different from the traditional one normally based on collective bargaining, production and productivity. This settlement is a joint effort to make visible the losing unit. This is not only in the interest of the workmen and the management but also in the interest of the society and nation at large, as these national resources are being made productive and contributory to national wealth. The age old plant of Bhor is trying to servive for last many years. 1994 settlement is with productivity clause which is at Sr. No. 3 in the settlement. By virtue of 1994 settlement union and the workmen have agreed to give increase in production by 22 Per Cent with immediate effect and it was agreed to give increase upto 40 Per Cent in production and productivity after modification. The capital expenditure incurred for modification and repair of plants and machinery for the period 1995 to 1996 to 1999-2000 comes to Rs. 99,38,85 the break up of said expenditure is as under :—

Period	Total Amount
1995-1996	Rs. 38,55,305.00
1996-1997	Rs. 09,93,159.00
1997-1998	Rs. 13,38,022.00
1998-1999	Rs. 25,96,141.00
1999-2000	Rs. 11,56,228.00
Total —	Rs. 99,38,855.00

Clause 14(f) of 1994 settlement says :—

"The workmen, clerks and staff falling to give the said agreed norms will not be entitled to received any of the benefits agreed upon in the said settlement, notwithstanding to the natural calamities like earthquake, power shortage and reasons beyond the control of the management."

By virtue of 1994 settlement the company has taken additional average financial burden of Rs. 650 per month per workmen only on the assurance of the union and workmen that they will give increase in production and productivity as stated above. It has been counselling the workmen time and again to give productivity as per agreed norms but the workmen have given no response. The workmen are in a habit not to start the work immediately when the shift starts. They never used to hand over the machines in running condition to the workmen in the next shift and all these activities on their part which were deliberate, caused decline in production. The action being collective one on the part of the workmen, it was not possible to take any individual action. The management had to take some individual actions, but there was no improvement on the part of the workmen. By virtue of 1994 settlement production norms are fixed. There is a system of recording production in the logbook every day. The production given by the workmen is recorded in the log book in the ordinary course of business and from the log book actual production given by the workmen can be ascertained. If there is any reason on the part of the management like power failure, non-availability of raw material, break down of machine etc. These reasons are also mentioned in the log book. Therefore, it counfirms that whatever productions is not given by the workmen is a deliberate act on the part of the workmen for which they are responsible. Due to internal rivalry among the leaders of the union, petty issues like supply of uniforms, shoes etc., the workmen and the union have always tried to pressurize the management. When it started asking repeatedly to the workmen to give

the agreed productivity, the union and the workmen demanded wage rise against it. The deliberate mischief and *malafide* intention on the part of the union and the workmen are very clear. Workmen resorted to violence and strike on 3rd December 1999. The management demanded assurance from the workmen for normalcy. Thereafter this matter went up to Industrial Court Pune in Application (MRTU) No. 7 of 1999 and the Industrial Court was pleased to appoint an Investigating Officer and the workmen joined duties. After resuming work they increased the production to some extent. The production figure for the period from November, 1999 to January, 2000 are being shown in a separate statement from which it is very clear that the workmen increased the production to some extent in the same circumstances. By virtue of 1994 settlement it was agreed not to resort any coercive tactics. However by indulging into the acts of indiscipline from 1st December 1999 to 8th December 1999 the union and the workmen have contravened the provisions of the settlement and company caused loss of about Rs. 10 lakhs per day. Company issued notice to the union on 5th December 1999, but the same has not been replied satisfactorily. The management was insisting for agreed productivity, the workmen went on giving various excuses on which the management wrongly believed. The union and the workmen were not interested in running the activities. There is evil design of the leadership of the union to paralyse the working of the plant. The evil design of the union has been proved by its conduct of giving 38 strike notices serially. The strike notice and the strike declared by the union shows that it had definite intention to close down the plant for one reason or the other. However, due to intervention of the local leaders, the leadership of the union failed in its objective and the plant could be re-started. Mr. V. S. Karanje, general secretary of the union and his gang knowing fully that there is no second line leadership and exploiting the workmen at large at the cost of the company. The leadership and instigation of union resorted to illegal and unjustified strike with effect from 7th March 2000. The series of 38 strike notices show the systematic plan of the union to paralyse the company. The union had given the first notice of strike on 21st February 2000 and thereafter went on giving notice of strike. The said strike is declared by the appropriate Court as illegal. The union was categorically informed that about loss more than Rs. 9 lacs per day due to their illegal strike. It was informed to the workmen by letter dated 22nd March 2000 that if the strike is not withdrawn immediately then it would be difficult for the company to continue its activities. Inspite of all these, the union and the workmen continued their activities of illegal and unjustified strike till 1st July 2000 and the entire activities of the company was paralysed during this period. Because of this unjustified and prolonged strike the company suffered heavy loss. The company lost huge production because of the strike. Due to financial loss the company was facing great problem of cash flow and the activities have been done hand to mouth, However, due to the strike resorted by the workmen finished goods could not be produced and whatever finished goods were there it could not be taken out. During the strike the union and the workmen did not allow the company to take any material out of the factory. The material as well as finished goods worth Rs. 4 croses was stranded due to coercive activities of the union and its members. This caused heavy financial losses to the first party company. All these situations were created by the union and its members deliberately. In the meeting dated 26th June 2000 with the Labour Minister, the union verbally agreed that the workmen would join work in phases. The leadership of the union got frustrated due to withdrawal of strike but due to pressure of workmen it had to withdraw the strike There was pressure on the leadership of the union from workmen and there was also pressure from the local leaders of Bhor Taluka. The workmen and leaders of the union unwillingly withdraw the strike and they continued their activities of giving low productivity. The company started the activity and gradually all the workmen were provided with work. With efforts the orders were generated and the activity of plaint was normalised. The union got frustrated because of this and started giving deliberately low quality output. The raw material which were supplied to the workmen for production were of good quality. They deliberately used to mis-manage the adjustments of the machines. All these

duties were performed and are being performed by the workmen. Only after the production the managerial staff used to come to know about these factors. The production is recorded on day to day basis from the Inspection Department. From the inspection report low quality output can be seen. The first party had displayed notices dated 2nd August 2000, 3rd September 2000, 6th January 2001, 3rd February 2001, 4th February 2001, 13th February 2001, 14th February 2001 and 26th February 2001. But the workmen did not pay any heed to it. It was normal expectation of the management to expect reasonable production / productivity and good quality production from the workmen. However the workmen and union did not accept this normal desire of the company and hence there was no alternative but to declare lock-out. As these cases were prominent in PVC and PU Departments, the lock out was declared in these concerned departments. The lock out continued by the first party *w. e. f.* 13th March 2001 as declared by notice dated 26th February 2001 was fully legal and justifiable. This lock out was withdrawn on 19th April 2001. With this background and denial of contention of the second party workmen it is stated by the first party company that the Tribunal may reject the demands of the second party workmen *in toto* with cost.

7. In view of the aforesaid pleadings of either parties this Tribunal is not required to frame any issues for determination because in the Schedule of the order of reference points for dispute are mentioned, which requires to decided by this Tribunal. Those points are as under .—

Issues	*Findings*
1. Whether workers are avoiding or production as agreed in 1994 settlement or giving less production?	Yes.
2. If yes, what are the reasons and its quantum ?	Please see the reasonary paragraph 13 and 14.
3. Whether workers are giving sub-standard/lower standard production ?	Yes.
4. If yes who is responsible ?	Workers.
5. For the aforesaid reasons whether the factory sustained any loss ? If yes, its quantum ?	Yes.
6. Considering the aforesaid facts whether lock-out declared by the management is justifiable ? If no, workers are entitled for which benefits for the lockout period ?	Workers are not entitled for relief .

Reasons

8. Before going to the merits of the dispute, it will be proper to state what is approach of the second party workmen and union while contesting this dispute. The second party workmen and /or union representing them has not filed statement of claim to justify their demand as normally happens in the adjudication matter. What the workers and the Union has one in this matter is to submit only statement. There is no word as a claim on behalf of the workmen or the union. The Statement is filed by Mr. Vitthal Karanje under his signature in the capacity of General Secretary Bhor Kamgar Union for the second party workmen. Though the caption of the Statement absent the word “claim” but the prayer is made in paragraph-13. Thus, it is crystal clear that the general secretary has prayed for a relief from this Tribunal on behalf of the workmen. In the opening of this statement which is a exhibit-U-3 in para No. 3 it is stated that, on account of the typical nature of facts and circumstances of the case, it is just fair proper and necessary that the onus of proving various contentions giving rise to the present order of

reference and the dispute are at the first instance proved by the company and the onus prove the negative is upon the union representing the workmen. In paragraph-4, further it is stated that,—

"Without prejudice to the foregoing, which goes to the very root of the matter, the union is filing the present statement. On account of the aforesaid reason, the union may be permitted to file its reply/rejoinder to bring on record the factual position upon receipt of the company's pleading in the present matter." Though such rights are reserved by the union but neither reply nor re-joinder filed by it after receipt of pleadings of the company. It is an admitted fact that union had approached to the conciliation authority with some grievances by its letter dated 2nd March 2001 and in the said letter lock out dated 26th February 2000 declared by the company is challenged. On this letter, the conciliation officer entertained grievance made by the union, issued notice to the company and there after dispute is referred for adjudication to this Court as no amicable settlement arrived between the parties before the conciliation officer. In view of this fact, obviously the union on behalf of the second party has raised demand. Therefore burden is upon the union and the workmen to justify their demand because it is a well settled principle under law that, a person who claims some relief against some one he has to first prove how he is entitled for the relief. It is to be noted that the dispute referred to this tribunal is under the provisions of Industrial Disputes Act for adjudication and in the adjudication onus of proving fact is not upon any particular party but both parties to the dispute are expected to assist, co-operate to the Tribunal for deciding the dispute. The union which is a recognised under the provisions of M. R. T. U. and P. U. L. P. Act, 1971 long back operating in the first party company for last more than 40 years. In view of this standing tenure of the union, it will not be proper to believe that the union has missed the word "claim" in the statement inadvertently but intentionally, deliberately with some motive has deleted the word "claim" from the statement and thereby avoided to justify its demand. Irrespective of these facts, in further paragraph of its statement every thing is pleaded about its standing, its activities, various litigations between the parties dispute regarding 1994 settlement, its applicability, productivity, conduct of first party company and finally challenged reasons given for lock-out by the first party and concluded its statement with prayer clause. Therefore though the union has missed the word "claim" in the statement no serious weightage is required to be given adversely but it will be proper to proceed in the matter in view of the facts stated by them union on behalf of the workmen.

9. Further is to be noted that the reasons best known to the union, no oral evidence is led to justify its demand. However, on behalf of the first party company three witnesses are examined *viz*. Rehmatali Sidhiqui Rehamatulla Sidhiqui-Exh. CW-1, Mr. Prakash Zambre-Exh. VW-2, Mr. A. R. Nandkumar-Exh. CW-3. Their depositions will be referred at the appropriate place.

10. With the help of the oral evidence and voluminous documents produced on record by the first party company, heard Shri A. K. Gupte, learned advocate for the first party and Shri A. Y. Shikarkhane, learned Advocate for second party workmen.

11. It will be proper to state the background of the dispute and some admitted facts of both parties.

Back ground of the Dispute :- Bhor Kamgar Union is representing the employees of Bhor Industries Ltd., Bhor, Dist. Pune for last more than 40 years. This union also got recognition certificate under the provisions of M. R. T. U. and P. U. L. P. Act, 1971. 1994 settlement is signed by and the between the first party company and the union on behalf of the employees. Zerox copy of the said settlement is on record which is at page 1 to 14 of Exh. C-9. This settlement bears signature of various persons including Mr. Vitthal Karange signatory of the statement filed in this dispute. This settlement is linked with productivity. Clause-No. 3 deals with productivity. Under Clause-3 F it is agreed between the parties that workmen

shall give agreed norms as per Annexure-A attested to this agreement and norms are fixed in Annexure-A to the settlement. Thus, it is an admitted fact that the norms are fixed by way of this settlement and figures shown in the annexure is agreeable to the workman. By and large, it appears from Clause-3A that the workers have agreed for giving increase production by 22% with immediate effect over and above the norms fixed between the management and the union in the year 1989 mainly in the areas of PU, PVC and Calender Departments and all the related work centres/departments would also increase production line with the above out put. It is also agreed that increase in production upto 40% would be given after modifications of machinery. The modifications would be mutually discussed and agreed upon. This productivity increase will be measured by the final output at Inspection being 22% more than the present output *i. e.* over the norms of the settlement dated 27th October 1989. Thus there is no dispute that by way of this settlement, it is agreed between the parties for increase of productivity. After expiry of period of this settlement, fresh charter of demands submitted by the union. No amicable settlement arrived between the parties on the said charter of demands. Hence on failure report of the conciliation officer the dispute is referred by the Government for adjudication to the Industrial Tribunal, Pune, which is still pending. Meanwhile on behalf of the workmen union had given strike notice on 21st February 2000 and thereafter continued to give such strike notice till 26th June 2000. Between the dates *i. e.* 21st February, 2000 to 26th June 2000 and total 38 strike notices are given by the General Secretary of the union. As I have stated that the union is recognised under the M. R. T. U. and P. U. L. P. Act therefore, in view of Sec. 24(b) the recognised union is required to obtain the vote of majority of the members of the union infavour of the strike before the notice of strike is given. If this mandatory provision is observed by the union then it can be stated that all the while during this period the union was busy in obtaining vote of majority of giving 38 strike notices. Further it is to be noted that the first strike notice dated 21st December 2000 intimating to the company for commencement of the strike *w. e. f.* 7th March 2000 challenged by the company before the Labour Court U/s. 25 of the M. R. T. U. and P. U. L. P. Act, 1971 as Ref. (ULP) No. 2/2000 and the learned Judge, Ist Labour Court, Pune by its order date 11th May 2000 declared that the strike commenced and continued by the union *w. e. f.* 7th March 2000 is illegal and was further directed to withdraw it within 48 hours. From the record it shows that the strike is not withdrawn but it invited political interference by approaching to the Honourable labour minister and ultimately with the intervention Honourable labour minister and Exh. MLA of Bhor Taluka the strike which is resorted by the union came to an end and it was agreed between the parties before the Honourable labour minister to start manufacturing activities from 1st July 2000. However, it was agreed between the parties that all the workers will not be allowed to report for duty on 1st July 2000 but they will be provided work in phases. Since all the workers are not allowed to report duty a Complaint ULP No. 223/2000 filed by the union before the Industrial Court, Pune.

12. In view of these facts, it is the contention of the first party company that the strike is unwillingly withdrawn by the leaders of the union. Therefore after reporting for duty from 1st July 2000 workmen started giving deliberately low quality out put. The raw material which were supplied to the workmen for production were of good quality. The workmen were deliberately mixing raw-materials with improper qualities. They deliberately used to change the formulations. They deliberately used to mis-managed adjustment of the machines. All these duties were performed by the workmen only with an intention to cause loss to the company. Quality of the production recorded day-to day basis in the inspection department. In view of their breach in performance of work various notices displayed an appeal was made to them to give production as agreed in 1994 settlement and in good quality. Since they were not responding to the appeals of the company, which resulted in losses and ultimately the company declared lock-out. With this background, let us see the points for consideration.

13. As I have already pointed out that 1994 settlement is signed by and between the parties, productivity norms are agreed between the parties. In view of this, let us see whether the workers have avoided to give production as agreed in 1994 settlement or given less production. As I have already pointed out that no oral evidence is led by the workmen or the union to claim that they had given production as agreed in 1994 settlement. On behalf of the first party company Exh. CW-1-Rahamatal Sidhiqui who is the Production Officer in the company since 1995 deposed that, daily production is recorded in the log book by the concerned workmen. After verifying the production given by the concerned workmen I put my signature on the log book. Now I am shown document at Sr. No. 1 of Ex. C-8, this is production log book of trading machine No. 1 for the period 27th February 2000 to 1st December 2001. On every page of this register it bears my signature. This register is written by the concerned worker, after verifying the facts I have countersigned. Contents therein are true and correct. It is marked as Exhibit C-10. Further the witness identified and affirmed the contents of document at Sr. No. a-2 and 3 of Exhibit C-8 which are registers known as Production Log Book. This document is marked Exhibit C-11. If document Exh. C-10 and Exh. 11 is perused these are the original Log Books written by the concerned workman and mentioned figure of production. Summary of inspection for the period 11th July 2000 to 31st January 2001 is also identified by the witness from document at Sr. No. C of Exh. C-8. He identified his signature and affirmed the contents therein, therefore, it is marked as Exh. C-13. Exhibit C-13 is Summary of Inspection. This witness further stated in his deposition that workers have given less production though agreed in 1994 settlement. This witness is not cross-examined on any of his contention but only two questions are asked from which nothing is achieved by the learned Advocate of the second party in its favour. After going through the documents, it is crystal clear that the workers have not given production as agreed in 1994 settlement.

14. The next witness Mr. Prakash Yashwant Zambre- Exh- CW-2, who is E. D. P. Manager. From the Log Book he has prepared statement on computer. Therefore he has stated in his deposition with these words, "I am incharge of computer section and look after all related matters to the computer system such as to prepare daily production report on computer and submit it to Vice President, to prepare monthly report of daily production report, store system, pay roll system, inventory system and records regarding all the stock done by my on computer." He identified documents at page 471 to 508 of Exh. C-9. Exhibit C-15 is the summary for production report prepared by CW-2 from the Log Book for the period July, 2000 to January, 2001. If the documents at pages 1055 to 1059 are perused, it clearly shows that production is low given by the workmen and obviously which is not as agreed in 1994 settlement. Witness further stated that required raw material was supplied from time to time. Therefore it was the responsibility of the workmen to give agreed production as per 1994 settlement. For what reason they were unable to give production as agreed, no where stated by the workmen. During the course of arguments Mr. A. Y. Shikarkhane Ld. Advocate for the second party submitted that, after re-starting the work from 1st July 2000 all work force was not employed by the company. Similarly, vacancies occurred due to death, retirement, termination etc. never filled up. Therefore the components were in-adequate. In these circumstances, it was very impossible for the workmen to give production as agreed in 1994 settlement with the help of less man power. To support this contention, no piece of evidence brought on record by the second party workmen. On the contrary, it is the submission of Ld. Advocate Mr. A. K. Gupte for the first party that the production is expected from particular work centre where all required work force was deployed. If it was the fact that work force is less then why the union has not brought this fact to the notice of the management and asked for required work force. I find substance in the submission of Ld. Advocate Gupte for first party because there is no documentary or oral evidence on this point led by the workmen. Hence, I am constrained to hold that the workers have avoided deliberately, intention all to give production as agreed in 1994 settlement. From the aforesaid documents, which is identified and affirmed by the witnesses and got exhibited, it is crystal clear that less production is given by the workmen. Why the workers are giving

less production can be easily assessed the said reasons from the approach of the union, who represent the workmen, by giving various strike notices. As I have stated that after expiry of 1994 settlement new settlement was required to be signed by the parties, but it could not be signed and the said dispute is referred for adjudication by the appropriate Government to the Industrial Tribunal, which is pending as on today. Thus, it is obvious that because of this reason the workers are not happy or satisfied with the approach of the union as well as management. Union has not accepted its responsibility but shrinkin its responsibility upon the management and to defend itself tried to give series of strike notices and pregented for show that how the union is active in resolving grievances of the workers. Which attempts are obviously illegal, declaration to that effect is also given by the appropriate Court. The decision of the said authority is under challenge before the Industrial Court, but at this stage, since that decision is not set asided, position is that the strike notice given by the union and commence of the strike is illegal. Therefore, I am constrained to hold that for the reasons stated above, the workers have avoided to give production as agreed in 1994 settlement. They are giving less production. They are only responsible for the less production, defective production, sub standard and lower production. The workers are only responsible for all the less production, sub standard and lower standard production. From the document page 1061 Exhibit-C-25 it is crystal clear that the production is given by the workman as under :—

"Low quality, inferior quality during July 2000 to January 2001 such as :—

PVC Section

Month	Total Production
July-2000	3403
August-2000	4060
September-2000	90525
October-2000	44603
November-2000	64761
December-2000	147738
January-2001	138387

PU Section

Month	Total Production
July-2000	2569
August-2000	23025
September-2000	25638
October-2000	14968
November-2000	8550
December-2000	13990
January-2001	0

Because of this low, inferior and less production, company has sustained loss. Summary of loss incurred due to less production on account of deliberate slow down by the workman during July, 2000 to January, 2001 is given on pages 1049 to 1051. Total loss of Rs. 32,53,140 in PVC Section, Rs. 17,03,060 in PU Section and Rs. 15,73,105 in Calender Section. The total loss in all these three units comes to Rs. 65,29,305. In view of all these facts which are proved with cogent evidence by the first party company by bringing original record before this Court, proved these documents and from these documents it is crystal clear that the company has sustained very huge loss because of non co-operation and non assistance from the workers in not giving agreed production as per 1994 settlement by giving less low and sub standard production for which the workers are only responsible. In these premises, it is to be seen whether lock out effected by the first party company is justifiable.

15. During the course of trial much capital is made by the union representing the workers that though it is agreed by the management in 1994 settlement for modification in the existing machineries, the modifications are not made, therefore the worker could not give production as expected by the company. To support this contention obviously there is no documentary or oral evidence on record. However, Company's witness CW3 in detailed deposed how much amount is incurred upon modification. The document Exh. C-19, Exh. C-20, C-21 shows total expenditure on " modification. To support this documents this witness further stated on oath that, modification is carried out by purchasing some material to that effect. Document Exh. C-23 and pg. 983 to 1922 of Exh. C-9 are sufficient. From all these facts, it is crystal clear that on modification also the company has incurred huge amount. From Exh. C-19, it shows that total Rs. 99,38,855 is incurred for modification and repairs of plant and machinery for the year 1995-96 to 1999-2000. Therefore, it cannot be accepted that the management has failed to modify its machinery, as agreed in 1994 settlement.

16. Admittedly lock out is not declared for the entire company but for certain departments *viz* :—

(1) P. U. / Drawing

(2) P. U. / Co-agulation

(3) P. U. / P. V. C./ Store Despatch

(4) P. V. C. / Mixing

(5) P. V. C. / Printing

(6) P. V. C. / paper batching - embossing

(7) P. V. C. / S-1 S-2

(8) P. V. C. / Liberty / P. U. / Lab.

The reasons in the lock out notice dated 26th February 2001 are also the same that the union had given strike notice on 7th March 2000 because of appointment of commissioner in Complaint (ULP) No. 2 of 2000 by the Industrial Court Union unwillingly withdrawn its illegal strike. Because of that total Rs. 168 lacs loss caused to the company. Thereafter company issued notices on 2nd August 2000, 3rd September 2000, 6th January 2001, 3rd February 2001, 4th February 2001, 14th February 2001, 26th February 2001 and requested the workers to give production as agreed in the settlement, give proper production from July, 2000 to January, 2001. The workers started to give low production due to which Rs. 48 lakhs loss caused, because of less production Rs. 65 lakh loss caused and because of rejection of production from the customer Total Rs. 165 lakhs loss caused to the Company during this period Rs. 55 lakh loss caused to the company. Because of all these reasons, lock-out is declared by the first party company. As I have already held that the workers have avoided to give production as agreed in 1994 settlement, given less production, low production and sub standard production. For giving low and sub standard production workers are only responsible and for this reason company sustained huge loss. In these circumstances, it is my considerable opinion that the lock out declared by the first party company is justifiable. Consequently the workers are not entitled for any reliefs of benefits for the lock out period.

17. Cumulative effects of my aforesaid observations lead me to hold that the second party workmen have failed to justify their demands. Hence the workmen are not entitled for any reliefs and the reference is answered accordingly.

18. Before parting with this award, 1st us see legal position on this subject in view of various case laws relied upon by the learned advocates of either party. Mr. A. Y. Shikarkhane, Advocate relied upon-

(1) 1964-2 LLJ-Pg, 426

Labour Commissioner, Madhya Pradesh *V/s.* Burhanpur Tapti Mills Ltd. and Ors.

It is my humble opinion that the ratio laid down by the Honourable Apex Court, in this case, is not applicable to the present dispute because the facts are different. The Honourable Apex Court has ruled with this word that,

"It is reasonable to hold therefore that for performing his functions u/s. 16(3) of the Act the Labour Commissioner has jurisdiction to decide the question of legality or illegality of a strike when that question is raised before him." Admittedly, in the present dispute legality of the lockout is not the subject matter.

(2) 1980 FLR-VOL-40 Pg. 291

Industrial Tubes Manufacturing Co. Ltd. *V/s.* Shri S. R. Samant, Judge, Industrial Court.

19. The ratio laid down by Their Lordships in this case also is not applicable to the present case, according to my humble opinion because of different facts of the present case.

20. Mr. A. Y. Shikarkhane, Advocate for second party workmen and Mr. A. K. Gupte, Advocate for first party Company both have relied upon the judgement of Honourable Apex Court reported in 1994-II CLR-753-Syndicate Bank and Anr. *V/s.* K. Umesh Nayak and Ors. After going through the ratio laid down by their Lordships of Honourable Apex Court, which is certainly in favour of the first party Company. It will be proper to reproduce the ratio laid down by the Honourable Apex Court para-32 and para-33 with these words :–

The strike or lock out is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to comple the other party to accept its damand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right.". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lock out as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available means have failed, to resolve it. It has to be resorted to, compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for their reason that industrial legislation such as the Act places additional restrictions on strikes and lock outs in public utility services. (Para 32).

" *Para-33 :* Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension *viz*., the interest of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer of the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not a capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promotes them."

21. In view of the legal position referred above most particularly the last one upon which reliance is placed by both the learned Advocates and the ratio laid down by the Honourable Apex Court reproduced above, it is my considered opinion that the workmen are not entitled for any relief.

22. In the aforesaid premises, it is equally necessary to find out whether it was possible for the first party company to provide work inspite of declaring lockout as I have already pointed out that employer as well as workmen are always causcious while resorting their weapon lock out and strike as a last resort because action of either party affects not only the interest of the parties concerned but it affects interest of entire society as hold by the Honourable Apex Court in the case *(Supra)*. I have pointed out that for party reasons union in the present matter, who represent second party workmen have given series of the strike notices total 38 continuously during the span of six months period. I have pointed out that being a recognised union u/s 24(b) of the M. R. T. U. and P. U. L. P. Act the union is required to obtain the vote of majority before giving strike notice. If every time union has obtained majority of vote before giving strike notices total 38, it is apparent and crystal clear that union was not interested in running the manufacturing activities of the company but always busy in obtaining vote of majority for giving such strike notices. This approach itself is certainly not healthy in the interest of the workers at all. Unless and until action of the management is declared as illegal and unjustified obviously the concerned workmen are not entitled for the wages. I have pointed out that because of less/low standard/sub standard production, go slow activities, in giving production caused huge losses to the first party company, quantum of the loss sustained by the company because of these reasons comes to Rs. 168/- lakhs in three units during July, 2000 to January, 2001 if the day to day activities of production is affected because of non-co-operation from the workmen it will not be proper to run the manufacturing activities for increasing further loss. Hence the first party company has taken appropriate decision in declaring the lock-out, considering all the situation at the relevant time. For all these reasons, it is my considered opinion that the workers are not entitled for any reliefs. The company has suffered heavy financial losses. As I have already considered in detail with the help of documentary and oral evidence, no cogent evidence is brought on record by the second party contrary to this. Hence the demand made by the second party workmen in this reference deserves to be rejected. With this, I pass the following award :—

Award

(1) Demand made by the Second Party-Workmen in this Reference stands rejected.

(2) In the circumstances, no order as to costs.

VIDYASAGAR KAMBLE,
Member,
Industrial Court, Pune.

Pune,
dated the 5th April 2002.

S. S. BUDHKAR,
Secretary,
Industrial Tribunal, Pune.

नि. जा. गजभिये,
कामगार आयुक्त,
महाराष्ट्र राज्य, मुंबई.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.